

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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YULY ARONSON,	:	Case No.: 07 CIV 9405
	:	(KMK)
Plaintiff,	:	
-against-	:	MEMORANDUM OF LAW
	:	
	:	
ANTHONY BRANCA,	:	
	:	
Defendant.	:	
-----X		

PLAINTIFF’S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR CIVIL CONTEMPT

Plaintiff’s Motion for Civil Contempt arises out of a violation of this Court’s Temporary Restraining Order (“TRO”) that is now a Preliminary Injunction. *Defendant admitted at his deposition that he sold property in violation of the order.*

I. Relevant Facts and Procedural History

The lawsuit at bar is for damages and equitable relief that arose from Defendant’s alleged fraud and related unlawful conduct pertaining to business relationships between the parties. A copy of the Complaint is attached as **Exhibit A**. One of the companies at issue is Windward Holdings Corp. (“Windward”). On November 28, 2007, the Plaintiff obtained a TRO pursuant to FRCP 65(b). The TRO states in relevant part that:

After hearing and consideration, it is Ordered that, or further order of this court [sic], the Defendant is preliminarily enjoined from the sale, conveyance, transfer, encumbrance or pledging as collateral the following: [...] property held by or in the name of Windward Holdings Corp. [...]

(emphasis added) *See*, TRO dated November 28, 2008; appended hereto as

Exhibit B.

Of note, the foregoing TRO was thereafter extended by subsequent orders (appended to Ex. B) and modified to become a Preliminary Injunction by Stipulation, *So Ordered* July 18, 2008, appended hereto as **Exhibit C.**

In the interim, on July 7, 2008, the Defendant's Examination Before Trial ("EBT") was taken at which time he was represented by counsel (Peter Goodrich, Esq.). A copy of the Transcript is appended as **Exhibit D.**

Pertaining to Windward, therein Defendant disclosed that in April 2008 Defendant violated the TRO by selling Windward's property located at 38 Seneca Street (*a/k/a* Seneca Walk), Ocean Bay Park, NY (the "Windward Property") without permission of this Court (or Plaintiff). Further, there has been no accounting or showing that the sale of the Windward Property was for valuable or proper consideration; the proceeds are missing too.

At the EBT and under oath, in response to the following questions by Plaintiff's Counsel (Brian Reis, Esq.), Defendant gave the following answers:

Q. What properties did Windward Holdings Corp. own, Mr. Branca?

A. Windward holdings Corp. owns a Fire Island house, it owns a piece of land down in Florida and 700 Sommer Street. Transcript, pg. 11, lines 11-15.

[...]

Q. I just have one more question, Mr. Branca, for today. I just want to clarify one thing. 38 Seneca Walk was just sold in April?

A. Correct. 2008.

Q. Was that a property that was held by Windward Holdings?

A. Yes.

[...]

Q. The TRO directed that no properties of Windward Holdings be sold, encumbered or pledged.

A. No it didn't, sir. It said none of the properties that belonged to Yuly Aronson or that Yuly Aronson claimed an interest in could be sold. If you take your shareholder agreement, it clearly states the 38 Seneca was not part of that deal.

MR. REIS: I have no further questions for you. Thank you. Transcript, pg. 114, line 20 – pg. 145, line 15.

II. Argument

The Defendant's above-described actions were plainly in civil contempt of this Court's TRO despite incredulous protestation to the contrary. There is clear and convincing evidence that Defendant, by the above-described sale of the Windward Property, did not diligently attempt to comply and thereby violated the clear and unambiguous order of the Court.

A. Civil Contempt has three (3) elements all of which have been proven by clear and convincing evidence.

To find Civil Contempt, a movant must establish that (1) the order the contemnor failed to comply with is clear and unambiguous, (2) the proof of noncompliance is clear and convincing, and (3) the contemnor has not diligently attempted to comply in a reasonable manner. King v. Allied Vision Ltd., 65 F.3d 1051, 1058 (2d Cir.1995) (elements of civil contempt). The Plaintiff at bar has established all of the elements.

1. The Order is clear and unambiguous.

A clear and unambiguous order is one that leaves “no uncertainty in the minds of those to whom it is addressed,” Hess v. New Jersey Transit Rail Operations, Inc., 846 F.2d 114, 116 (2d Cir.1988), who “must be able to ascertain from the four corners of the order precisely what acts are forbidden.” *See*, Drywall Tapers, Local 1974 v. Local 530, Operative Plasterers Int'l Ass'n, 889 F.2d 389, 395 (2d Cir.1989), cert. denied, 494 U.S. 1030, 110 S.Ct. 1478, 108 L.Ed.2d 615 (1990). In the case at bar, the Court left no room for error or misinterpretation in its Order. The sale, conveyance, transfer, encumbrance or pledging as collateral of Windward Assets were all expressly prohibited. **Ex. B.**

2. The proof of noncompliance is clear and convincing.

Defendant’s admissions under oath are direct evidence of the non-compliance. See FRE 804 (b)(3) Statement Against Interest. Moreover, pursuant to Rule 1007, “[c]ontents of things may be proved by the testimony or deposition of the party against whom offered or by that party’s written admission, without accounting for the nonproduction of the original.” As such, the Court may use the deposition transcript provided (Ex. D) as evidence in chief without the need for the undersigned to produce the original deposition transcript.

3. The contemnor has not diligently attempted to comply in a reasonable manner.

In the case at bar contemnor is the Defendant. His self-serving testimony that the Windward Property was not part of the TRO is absurd. Defendant shows that he either (i) did not even read the plain language of the TRO, or (ii) ignored the obvious language for his advantage.

As such, Defendant was far from reasonably diligent. Rather, his conduct was a flagrant disregard of the clear Order. Thus, the third prong for civil contempt vis a vis King, *supra*, has been satisfied as well.

B. The violation is continuing.

In addition to the illegal sale, which violated the TRO, Defendant has neither provided details (*e.g.*, sales contract, date of sale, etc.) nor accounted for the proceeds of the transaction. Since Defendant is still acting in violation of the order, now a preliminary injunction, by his secrecy and wasting of assets, *remedial sanctions* are necessary and proper to bring him into compliance. *See, Objective Solutions Intern., Ltd. v. Gammon* 2008 WL 538445 pg. 3, S.D.N.Y. 2008, *citing Paramedics Electromedia Comercial, Ltda. v. GE Med. Sys. Info Tech., Inc.*, 369 F.3d 645, 657 (2d Cir.2004); *Perfect Fit Indus., Inc. v. Acme Quilting Co., Inc.*, 673 F.2d 53, 56 (2d. Cir.1982).

II. Conclusion

Defendant by admission violated the TRO and has failed to account. As such, he must be held in civil contempt. Accordingly, Plaintiff should be awarded return of the Windward Property and/or such security necessary to restore the Windward assets to their prior status and value, along with reasonable attorney's fees and costs for this motion, and for such relief deemed appropriate in the discretion of the Court.

Dated: August 8, 2008
New York, NY

Respectfully,



Andrew Small, Esq. (AS-1294)
Law Office of Brian Reis, Esq.
80 Broad St. 33rd Fl.
New York, NY 10004
Direct Tel. 212.983.0921
Direct Fax: 212.656.1037
Email: abslawyer@comcast.net

To: **Attorney for Defendant**
Peter Goodrich, Esq.
Goodrich & Bendish
399 Knollwood Road, Ste. 303
White Plains, NY 10603

EXHIBIT A

Defendant.

-X
:
: COMPLAINT
:
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: Index No. 07 CIV 9405
: Assigned to Judge McMahon
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NATURE OF THIS ACTION

1. This is a proceeding to recover losses sustained by Plaintiff due to the fraudulent actions of Defendant in his capacity (1) as a Certified Public Account (“CPA”) retained by Plaintiff and entities in which Plaintiff held and holds interests and (2) as a fellow shareholder and Member of entities in which Plaintiff was and is a shareholder and Member. Simply stated, Defendant utilized his position as a CPA and shareholder and Member to defraud and embezzle monies and property in which Plaintiff held an interest, by forging the signature of Plaintiff on checks made payable to Defendant, and by submitting false expense invoices to Plaintiff and the entities in which Plaintiff held and holds an interest, in order to obtain wrongfully payments to Defendant. In addition, upon information and belief, Defendant has wrongfully conveyed property interests of Plaintiff to himself by forging the signature of Plaintiff on corporate documents. As a result, Plaintiff has been damaged in excess of \$750,000.

THE PARTIES and JURISDICTION

2. Plaintiff is an individual who resides in Connecticut.

3. Upon information and belief, Defendant is an individual who resides in Bedford, NY.

4. Diversity jurisdiction of this Court is founded upon 28 U.S.C. § 1332 as Plaintiff is a citizen of the state of Connecticut and the Defendant is a citizen of New York and the matter in controversy exceeds Seventy Five Thousand Dollars (\$75,000) exclusive of interest and costs.

5. Venue is proper in this District pursuant to 28 U.S.C. § 1391 (a) (3), because a substantial number of the events or omissions giving rise to the claims herein occurred within this District or were committed here, and pursuant to 28 U.S.C. § 1391 (a) (1) and (3) because the Defendant resides in this judicial district and is subject to personal jurisdiction here.

ALLEGATIONS and FACTS

6. Plaintiff was and is the sole shareholder in May Construction Co., Inc (“May Construction”) a New York corporation.

7. Defendant is a CPA and Plaintiff retained the services of Defendant in his capacity as a CPA on behalf of May Construction during the period of 1994 through the present.

8. As a result of concern by Plaintiff that funds in the account of May Construction were being misappropriated, Plaintiff began to review random checks of May Construction and learned that Defendant had forged the signature of Plaintiff on checks made payable to Defendant.

9. Plaintiff also became aware through the random review of checks, that Defendant had negotiated checks in amounts that had no correlation to work performed by Defendant in his capacity as a CPA.

10. Plaintiff and Defendant were also shareholders in an entity known as Windward Holdings, Corp. ("Windward Holdings") and fellow members of an entity known as Bearhill, LLC ("Bearhill").

11. As part of his contribution as a shareholder of Windward Holdings, LLC and a Member of Bearhill, Defendant acted in his capacity as a CPA and maintained the books and records of those entities.

12. Defendant has submitted documents to Plaintiff regarding the alleged expenses and payment of expenses relating to Windward Holdings, LLC and these documents evidence the misappropriation of funds by Defendant.

13. Defendant has also submitted documents to Plaintiff regarding the alleged expenses and payment of expenses relating to Bearhill and these documents evidence the misappropriation of funds by Defendant.

14. In addition, upon information and belief, Defendant has wrongfully conveyed property interests of Plaintiff to himself by forging the signature of Plaintiff on corporate documents.

-AS AND FOR A FIRST CAUSE OF ACTION-

15. Plaintiff repeats and realleges ¶'s 1- 14 as if fully set forth herein.

16. In his capacity as the CPA to May Construction, the entity owned by Plaintiff, Defendant owed a fiduciary duty to perform his accounting duties professionally and ethically.

17. The known forgeries by Defendant which resulted in payments to Defendant and his accounting firm through the account of May Construction, is a breach of the fiduciary duty owed to Plaintiff.

18. Upon information and belief, Defendant engaged in additional acts of forgery and wrongful payments to himself and to his accounting firm through the account of May Construction, and those actions are also in breach of the fiduciary duty owed to Plaintiff.

19. Plaintiff has sustained damages in excess of \$75,000 as a result of the breach of fiduciary duty by Defendant.

20. Plaintiff requests Judgment in an amount in excess of \$75,000 against Defendant plus interest at the prevailing rate from the date of each breach that resulted in damages.

-AS AND FOR A SECOND CAUSE OF ACTION-

21. Plaintiff repeats and realleges ¶'s 1- 20 as if fully set forth herein.

22. As part of his contribution as a shareholder of Windward Holdings, LLC, Defendant acted in his capacity as a CPA and maintained the books and records of that entity. In his capacity as the CPA to Windward Holdings, Defendant owed a fiduciary duty to plaintiff to perform his accounting duties professionally and ethically.

22. By submitting false invoices to Plaintiff in order to obtain payments from Plaintiff, the Defendant is in a breach of the fiduciary duty owed to Plaintiff.

23. Plaintiff has sustained damages in excess of \$20,000 as a result of the breach of fiduciary duty by Defendant.

24. Plaintiff requests Judgment in an amount in excess of \$20,000 against Defendant plus interest at the prevailing rate from the date of each breach that resulted in damages.

-AS AND FOR A THIRD CAUSE OF ACTION-

25. Plaintiff repeats and realleges ¶'s 1- 24 as if fully set forth herein.

26. As part of his contribution as a Member of Bearhill, Defendant acted in his capacity as a CPA and maintained the books and records of that entity In his capacity as the CPA to Bearhill, Defendant owed a fiduciary duty to plaintiff and Bearhill to perform his accounting duties professionally and ethically.

27. By submitting false invoices to Plaintiff in order to obtain payments from Plaintiff the Defendant is a breach of the fiduciary duty owed to Plaintiff.

28. Plaintiff has sustained damages in excess of \$20,000 as a result of the breach of fiduciary duty by Defendant.

29. Plaintiff requests Judgment in an amount in excess of \$20,000 against Defendant plus interest at the prevailing rate from the date of each breach that resulted in damages.

-AS AND FOR A FOURTH CAUSE OF ACTION-

30. Plaintiff repeats and realleges ¶'s 1- 29 as if fully set forth herein.

31. Through his retention as a CPA to May Construction, the entity owned solely by Plaintiff, Defendant had a contractual obligation to Plaintiff to perform his accounting duties professionally and ethically.

32. The known forgeries and payments by Defendant and his accounting firm through the account of May Construction, is a breach contract.

33. Upon information and belief, Defendant engaged in additional acts of forgery and wrongful payments to himself and to his accounting firm through the account of May Construction, and those actions are also a breach of contract.

34. Plaintiff has sustained damages in excess of \$20,000 as a result of the breach of contract by Defendant.

35. Plaintiff requests Judgment in an amount in excess of \$20,000 against Defendant plus interest at the prevailing rate from the date of each breach that resulted in damages.

-AS AND FOR A FIFTH CAUSE OF ACTION-

36. Plaintiff repeats and realleges ¶'s 1- 35 as if fully set forth herein.

37. As part of his contribution as a shareholder of Windward Holdings, LLC, Defendant acted in his capacity as a CPA and maintained the books and records of that entity. Through his retention as a CPA to Windward Holdings, Defendant had a contractual obligation to Plaintiff to perform his accounting duties professionally and ethically.

38. By submitting false vendor to Plaintiff in order to obtain payments from Plaintiff the Defendant is in a breach of contract.

39. Plaintiff has sustained damages in excess of \$20,000 as a result of the breach of contract by Defendant.

40. Plaintiff requests Judgment in an amount in excess of \$20,000 against Defendant plus interest at the prevailing rate from the date of each breach that resulted in damages.

-AS AND FOR A SIXTH CAUSE OF ACTION-

41. Plaintiff repeats and realleges ¶'s 1- 40 as if fully set forth herein.

42. As part of his contribution as a Member of Bearhill, Defendant acted in his capacity as a CPA and maintained the books and records of that entity. Through his retention as a CPA to Bearhill, Defendant had a contractual obligation to Plaintiff to perform his accounting duties professionally and ethically.

43. By submitting false invoices to Plaintiff in order to obtain payments from Plaintiff the Defendant is in a breach of contract.

44. Plaintiff has sustained damages in excess of \$20,000 as a result of the breach of contract by Defendant.

45. Plaintiff requests Judgment in an amount in excess of \$20,000 against Defendant plus interest at the prevailing rate from the date of each breach that resulted in damages.

-AS AND FOR A SEVENTH CAUSE OF ACTION-

46. Plaintiff repeats and realleges ¶'s 1- 46 as if fully set forth herein.

47. Upon information and belief, Defendant has wrongfully conveyed property interests of Plaintiff to himself by forging the signature of Plaintiff on corporate documents.

47. Specifically, Defendant forged the signature of Plaintiff on a document titled "Windward Holdings Corp. Amendment to Shareholders Agreement" which states, inter alia, that Plaintiff sold his shares of Windward Holding to Defendant for ten dollars on about June 1, 2005.

48. Plaintiff did not sign said document.

49. Upon information and belief, Defendant has wrongfully conveyed assets to himself that were held by Windward Holdings, to which Plaintiff has an interest.

50. Upon information and belief, as a result of the wrongful conveyance, Plaintiff has sustained damages in an amount in excess of \$400,000.

51. Plaintiff requests Judgment in an amount in excess of \$400,000 against Defendant plus interest at the prevailing rate from the date of each breach that resulted in damages.

WHEREFORE, Plaintiff respectfully request that Judgment be had as requested herein, together with such other and further relief as the Court may deem just and proper, including costs.

Brian H. Reis, Esq. (7843)
Law Office of Brian H. Reis
Counsel for Plaintiff
80 Broad Street- 33rd Floor
New York, NY 10004
212-785-5170

EXHIBIT B

NOV 10 2007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
YULY ARONSON,

Plaintiff

-Against-

ANTHONY BRANCA,

Defendant.
-----X

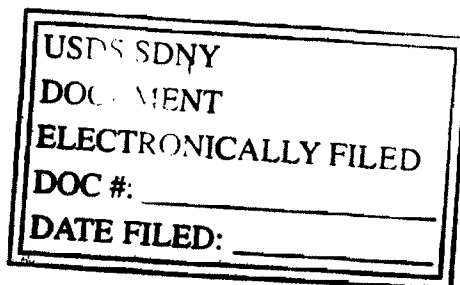
Case No.: 07 CIV 9405
(KMK)

ORDER UPON
STIPULATION

Upon Stipulation of the parties to adjourn the hearing on Plaintiff's motion for a preliminary injunction (the "motion") from December 10, 2007 to December 17, 2007 it is hereby,

ORDERED that the prior briefing schedule is modified as follows: Defendant shall serve and file his opposition by December 7, 2007; Plaintiff shall serve and file his reply thereto by December 11, 2007, and it is further,

ORDERED, that by stipulation of the parties actually obtained, and irrespective of any statute or rule to the contrary, the prior order of the court dated November 28, 2007 as to the disposition of property (the "TRO"), incorporated herewith by reference, shall remain in full force and effect past December 10, 2007, until further order of this court.



SO ORDERED:
U.S.D.J.
11/30/07

DEC 13 2007

80 BROAD STREET- 33rd FLOOR
NEW YORK, NEW YORK 10004

LAW OFFICE OF
BRIAN H. REIS

MEMO ENDORSED

December 13, 2007

(Via Fax 914-390-4152)
Honorable Judge Kenneth M. Karas
United States District Court
Southern District of New York
300 Quarropas Street
White Plains, NY 10601

Re: Yuly Aronson v. Anthony Branca
07 CIV 9405

Dear Judge Karas:

I represent the Plaintiff in the above matter. I have spoken to counsel for the Defendant this morning regarding the production of documents that are being sought from Defendant by Plaintiff in support of the Injunctive Relief sought herein, and both counsel agree that given the amount of documentation required, that a joint request to briefly adjourn the hearing presently scheduled for December 17, 2007 is appropriate, and counsel for both parties have agreed that the TRO presently affect should be extended until by Your Honor until the rescheduled hearing.

I have conveyed this to your Law Clerk this morning who advised that if Your Honor is inclined to grant the above request, that counsel should call your Docket Clerk tomorrow to reschedule the hearing. I have conveyed this to counsel for Defendant and I represent that he has agreed to do so with me tomorrow.

With the above in mind, it is respectfully requested the hearing scheduled for Monday be adjourned briefly, and that you continue the TRO currently in place until the date of the rescheduled hearing.

I thank you sincerely for your consideration.

Very Truly Yours,



Brian H. Reis

Cc: Peter Goodrich (Via Fax 914-683-6770)

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*The hearing is adjourned
until January 8, 2008, at 10:00*

SO ORDERED



KENNETH M. KARAS U.S.D.J.

LAW OFFICE OF
BRIAN H. REIS

80 BROAD STREET- 33rd FLOOR
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TEL (212) 785-5170
FAX (212) 785-5179
E-MAIL esqkape@aol.com

January 3, 2008

(Via Fax 914-390-4152)
Honorable Judge Kenneth M. Karas
United States District Court
Southern District of New York
300 Quarropas Street
White Plains, NY 10601

MEMO ENDORSED

Re: Yuly Aronson v. Anthony Branca
07 CIV 9405

Dear Judge Karas:

I represent the Plaintiff in the above matter. I have just spoken to counsel for the Defendant this morning regarding the production of documents that are being sought from Defendant by Plaintiff in support of the Injunctive Relief sought herein, and both counsel agree that additional time is required to produce the requested documents. Therefore, both parties respectfully request a brief adjournment of the hearing presently scheduled for January 8, 2008. Counsel for both parties have agreed that the TRO presently in affect should be extended until by Your Honor until the rescheduled hearing.

I am also authorized to advise that the parties are available for the rescheduled hearing of this matter from January 28, 2008 through February 1, 2008.

Very Truly Yours,

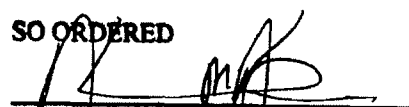

Brian H. Reis

Cc: Peter Goodrich (Via Fax 914-683-6770)

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The hearing is adjourned until January 29, 2008
at 10 am. On the consent of the parties,
the TRO will remain in effect until then.

SO ORDERED


KENNETH M. KARAS U.S.D.J.
1/4/08

LAW OFFICE OF
BRIAN H. REIS

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E-MAIL csqkapt@aol.com

January 22, 2008

JAN 22 2008

(Via Fax 914-390-4152)
Honorable Judge Kenneth M. Karas
United States District Court
Southern District of New York
300 Quarropas Street
White Plains, NY 10601

MEMO ENDORSED

Re: Yuly Aronson v. Anthony Branca
07 CIV 9405

Dear Judge Karas:

I represent the Plaintiff in the above matter. I have spoken to counsel for the Defendant last week and this morning regarding the production of documents that are being sought from Defendant by Plaintiff in support of the Injunctive Relief sought herein, and both counsel continue to agree that given the amount of documentation required and the probable need to apply to Your Honor for an Order to produce documents, that a joint request to briefly adjourn the hearing presently scheduled for January 24, 2007 is appropriate. Counsel for both parties have agreed that the TRO presently affect should be extended until by Your Honor until the rescheduled hearing. I have conveyed this to your Law Clerk this morning.

I advise that counsel for the parties are available for the rescheduling of this matter during the last two weeks of February, other than February 26, 2008.

With the above in mind, it is respectfully requested the hearing scheduled for Thursday be adjourned briefly, and that you continue the TRO currently in place until the date of the rescheduled hearing.

I thank you sincerely for your consideration.

Very Truly Yours,



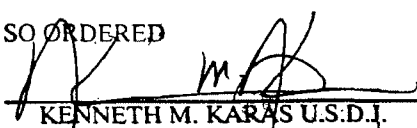
Brian H. Reis

Cc: Peter Goodrich (Via Fax 914-683-6770)

The preliminary injunction hearing will be rescheduled until February 25, 2008, at 10 am.

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DATE FILED: _____

SO ORDERED


KENNETH M. KARAS U.S.D.J.

1/24/08

LAW OFFICE OF
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February 20, 2008

(Via Fax 914-390-4152)
Honorable Judge Kenneth M. Karas
United States District Court
Southern District of New York
300 Quarropas Street
White Plains, NY 10601

MEMO ENDORSED

Re: Yuly Aronson v. Anthony Branca
07 CIV 9405

USDS SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED:
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Dear Judge Karas:


I represent the Plaintiff in the above matter. I have spoken to counsel for the Defendant yesterday at great length regarding the production of documents that continue to be sought by both parties in support of the positions relating to the TRO that is currently in place, and both counsel have now concluded that Motions to Compel the production of documents requested in subpoena's served upon the parties need to be filed in order to obtain the documents sought. Given the amount of documentation required and the fact that both parties will be filing Motions to Compel, the parties jointly request that Your Honor adjourn the Hearing presently scheduled for February 25, 2008.

I advise that counsel for the parties are available for the rescheduling of this matter during the entire week of April 14 and the entire week beginning April 28, 2008.

With the above in mind, it is respectfully requested the hearing scheduled for next Monday be adjourned, and that you continue the TRO currently in place until the date of the rescheduled hearing.

I thank you sincerely for your consideration.

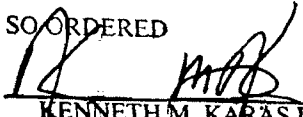
Very Truly Yours,


Brian H. Reis

Granted. The hearing is adjourned
until April 29, 2008, at 10:00

Cc: Peter Goodrich (Via Fax 914-683-6770)

SO ORDERED


KENNETH M. KARAS U.S.D.J.
2/20/08

LAW OFFICE OF
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April 22, 2008

(Via Fax 914-390-4152)
Honorable Judge Kenneth M. Karas
United States District Court
Southern District of New York
300 Quarropas Street
White Plains, NY 10601

MEMO ENDORSED

Re: Yuly Aronson v. Anthony Branca
07 CIV 9405

Dear Judge Karas:

I represent the Plaintiff in the above matter. The parties jointly seek an adjournment of the Hearing presently scheduled before Your Honor on April 29, 2008. The parties are presently scheduled to confer with Judge Yanthis this week (although due to a scheduling conflict as expressed to the clerk for Judge Yanthis, that conference is likely to be rescheduled for May 15, 2008) in an effort to resolve issues relating to the subpoenas served by the parties in support of the Hearing before Your Honor, and it does not seem that the parties will possess the documents required to prosecute and defend the injunctive relief sought before the hearing date previously set by Your Honor.

With the above in mind, the parties ask that Your Honor reschedule the date of the Hearing after May 15, 2008, with consideration of some time for the parties to provide documents as "So Ordered" by Judge Yanthis at the May 15, 2008 conference. I am not available for the rescheduled hearing during the week of June 9, 2008 as I am representing a client at a hearing during that week, if Your Honor can take that into consideration.

Very Truly Yours,



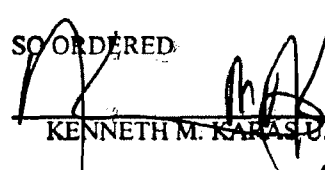
Brian H. Reis

Cc: Peter Goodrich (Via Fax 914-683-6770)

The hearing is adjourned until June 4, 2008, at 11:15 am. The TRO presently in effect will remain so until the hearing.

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SO ORDERED


KENNETH M. KARAS, U.S.D.J.

4/29/08

LAW OFFICE OF
BRIAN H. REIS

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NEW YORK, NEW YORK 10004

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May 27, 2008

(Via Fax 914-390-4152)
Honorable Judge Kenneth M. Karas
United States District Court
Southern District of New York
300 Quarropas Street
White Plains, NY 10601

MEMO ENDORSED

Re: Yuly Aronson v. Anthony Branca
07 CIV 9405

Dear Judge Karas:

As you may recall, I represent the Plaintiff in the above matter. Counsel for Defendant and I appeared before Judge Yanthis this morning and I am pleased to represent to you that His Honor satisfactorily resolved the document issues that had previously existed relating to the issued subpoenas. The only issue that remains, however, is the deposition of Defendant Branca.

As discussed with Your Honor during the last telephonic conference, I had served counsel for Defendant with a Subpoena to take the deposition of his client and had set the deposition date for May 23, 2008. As an accommodation to counsel for Defendant since he was leaving for an early Memorial Day vacation, we agreed to adjourn the deposition until June 2, 2008.

Just before entering the courtroom of Judge Yanthis today, counsel for Defendant advised me that his client was not available for the deposition on June 2nd, and that "when he advised me that June 2nd was acceptable, that he meant it was acceptable to him personally". I respectfully disagree with that statement, but nevertheless, the fact remains that Defendant does not appear to be available on June 2nd for the deposition.

Judge Yanthis Ordered that the deposition occur before June 4th, in deference to the scheduled hearing before Your Honor, and counsel for Defendant has advised me that his client is only available on June 3, 2008-- the day before the hearing before Your Honor. I believe that the deposition of Defendant will take longer than one day given the issues involved and the documents that we have received through discovery and which have now been ordered to be produced.

I am writing to you today Your Honor to ask for the final adjournment of this matter so that I can properly take the deposition of Defendant and present a right and

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DOC #: _____
DATE FILED: _____

LAW OFFICE OF
BRIAN H. REIS

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FAX (212) 785-5179
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coherent case to your Honor now that Judge Yanthis has Ordered the production of certain documents that I requested.

I have sought the consent of Counsel for Defendant to this request, and he is unable to consent based upon his client's instructions not to consent to the request. This is similar to the reasoning for the lack of consent to Amend the Compliant to include Smith Barney, which Your Honor has recently granted notwithstanding.

I will make myself available for the rescheduling of this matter any time during the months of June or July, except June 5th and during the period of June 16th through 24th, 2008. As an side, I will be out of my office for the remainder of today and tomorrow and will not be receiving facsimiles during that time, but if Your Honor requires an immediate phone conference to discuss this matter, I humbly ask that a message be left for me on voice mail to that effect.

Very Truly Yours,


Brian H. Reis

Cc: Peter Goodrich (Via Fax 914-683-6770)

The Court will adjourn, for the last time,
the hearing until July 14, 2008, leaving in place
the TRO originally entered in this case. The hearing
will begin at 10 am.

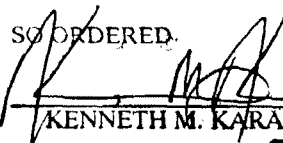
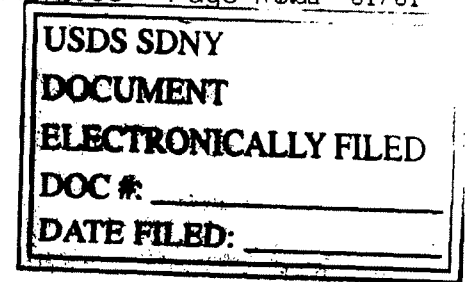
SO ORDERED.

KENNETH M. KARAS U.S.D.J.
5/28/08

EXHIBIT C



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

YULY ARONSON,

Plaintiff,

-against-

ANTHONY BRANCA,

Defendant.


STIPULATION

Case No. 07 CIV 9405

IT IS HEREBY STIPULATED AND AGREED, by and between the parties, that in lieu of conducting a hearing to convert the present TRO to a permanent restraining order, the court will convert the present TRO to a permanent restraining order with the following understanding: that defendant can do or take any actions that will result in the appreciation of any of the properties, can continue to take any steps necessary to protect and develop the properties with the further agreement that any such actions must be approved by plaintiff. Further, that all monies expended for such development or appreciation will be the exclusive funds of defendant. All requests for approval must be in writing and faxed to and received by plaintiff's attorney at least 5 business days prior to taking the action requested. In the event plaintiff expends any funds with respect to the above, he must maintain a record of all expenditures with back up documents. The Clerk is to terminate any pending motions.

Dated: July 10, 2008 White Plains, New York

SO ORDERED this 18th day of July, 2008


Honorable Kenneth M. Karas

Branca's deposition.txt

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - X
YULY ARONSON,

Plaintiff,

-against-

Index No.: 07CIV9405

ANTHONY BRANCA,

Defendant.

- - - - - X
399 Knollwood Road
White Plains, New York
July 7th, 2008
9:30 a.m.

EXAMINATION BEFORE TRIAL of the
Defendant, ANTHONY BRANCA, pursuant to Court
Order and held at the above time and place and
before a Notary Public of the State of
New York.

CARL ANDERSON
Court Reporter
PO Box 500
Bedford, New York
10506-0500
(914) 234-3215

BY: Kathryn MacDonald, Court Reporter

□

A P P E A R A N C E S :

Branca's deposition.txt
LAW OFFICE OF BRIAN H. REIS
Attorney for the Plaintiff
80 Broad Street, 33rd Floor
New York, New York 10004
BY: BRIAN H. REIS, ESQ.
(212) 785-5170

GOODRICH & BENDISH
Attorneys for Defendant
399 Knollwood Road, #303
White Plains, New York 10603
BY: PETER T. GOODRICH, ESQ.
(914) 683-8484

A L S O P R E S E N T:
YULY ARONSON, Plaintiff

□

IT IS HEREBY STIPULATED AND AGREED by
and between the attorneys for the respective
parties hereto that this examination may be
sworn to by and before any notary public.

IT IS FURTHER STIPULATED AND AGREED
that the filing and certification of the said
Page 2

Branca's deposition.txt

examination shall be waived.

IT IS FURTHER STIPULATED AND AGREED
that all objections to questions, except as to
the form of the question, shall be reserved for
the time of trial.

□

1

4

2 A N T H O N Y B R A N C A, having been sworn
3 by Kathryn MacDonald, a Notary Public
4 of the State of New York, and stating
5 his address as 48 Davids Way, Bedford
6 Hills, New York 10507, was examined
7 and testified as follows:

8 EXAMINATION BY

9 MR. REIS:

10 Q. Good morning, Mr. Branca.

11 My name is Brian Reis, I represent Mr. Aronson

Branca's deposition.txt

12 in this matter.

13 We are here today because I am
14 going to ask you some questions. If you have
15 any difficulty understanding the questions that
16 I ask, I ask that you let me know on the record
17 and that you ask me to rephrase the question if
18 you need to because if you answer the
19 question, I will assume you understand the
20 question. Do you understand that?

21 A. Yes.

22 Q. We will take short breaks at
23 reasonable intervals. If you need to use the
24 men's room at any time, let me know. While a
25 question is pending, I ask that you do not

□

1 A. Branca
2 speak to your attorney at all. Do you
3 understand that?

5

4 A. Yes.

5 MR. GOODRICH: We will sort of
6 reserve on that. If he has a question
7 as to the legality of the question, he
8 has a right to speak to me about the
9 legality. I have no intention of
10 telling him how to answer the
11 question, but if he has a question as
12 to the legality of the question, it's
13 relevance, anything else, I think he
14 has a right to legal advice.

15 MR. REIS: I disagree.
16 You can object as you see fit.

Branca's deposition.txt

17 MR. GOODRICH: Well, maybe it
18 won't come up.

19 Q. Mr. Branca, are you presently a
20 certified public accountant?

21 A. Yes.

22 Q. Were you a certified public
23 accountant at all times during your
24 relationship with Mr. Aronson?

25 A. Yes.

□

1 A. Branca

6

2 Q. Did your license lapse at any
3 point in time?

4 A. No.

5 Q. How long have you known
6 Mr. Aronson?

7 A. Approximately, '83, '84, '85.

8 MR. GOODRICH: You are talking
9 about '19 --

10 MR. REIS: I don't think we are
11 talking about '18.

12 MR. GOODRICH: No, but I mean
13 it could be months, years.

14 MR. REIS: I understood it to
15 be years.

16 MR. GOODRICH: Okay.

17 Q. Your address is 48 Bedford Way,
18 Bedford?

19 A. Davids way.

20 MR. REIS: I'm sorry.

Branca's deposition.txt

21 Q. who owns that property?

22 A. It is owned by an LLC.

23 Q. what is the name of the LLC?

24 A. 266 North Street, LLC.

25 Q. who are the members of that LLC?

1

1 A. Branca 7

2 A. My wife and myself.

3 Q. Did Mr. Aronson contribute any

4 money towards the purchase of that property at

5 48 Davids Way?

6 A. No.

7 Q. Did he contribute any money

8 towards the upkeep or renovations of that

9 property?

10 A. No.

11 Q. Are you familiar with the

12 property at 7 Frederick Court in Harrison,

13 New York?

14 A. Yes.

15 Q. Who owns that property?

16 A. It's sold. I don't know.

17 Q. Who owned that property to the

18 extent that you had an interest in that

19 property?

20 A. 266 North Street, LLC.

21 Q. Was Mr. Aronson a member at any

22 time of that LLC?

23 A. No.

24 Q. Did Mr. Aronson contribute any

25 funds towards the purchase of that property?

Branca's deposition.txt

□

1 A. Branca 8

2 A. No.

3 Q. Did Mr. Aronson contribute any
4 monies towards the maintenance or renovation of
5 that property?

6 A. No.

7 Q. When I say, "Mr. Aronson,"
8 I mean Mr. Aronson or May Construction.

9 Did May Construction have an
10 interest in that LLC that we just discussed?

11 A. No.

12 Q. Did May Construction contribute
13 any monies towards the purchase of 48 Davids
14 way or 7 Frederick Court?

15 MR. GOODRICH: First of all, I
16 am going to object because there is no
17 relevance as to May Construction
18 because May Construction is not a
19 party to this action.

20 MR. REIS: Can you answer that
21 question, please.

22 THE WITNESS: I'm not going to
23 answer it.

24 MR. REIS: You are instructing
25 him not to answer that question?

□

1 A. Branca 9

2 MR. GOODRICH: I am objecting.

Branca's deposition.txt
3 You can answer the question but I am
4 objecting because May Construction is
5 not a party to this action.

6 A. what was the question?

7 Q. The question is, did May
8 Construction contribute any monies towards the
9 purchase of those properties?

10 A. Can you define "contribute"?

11 Q. What is your understanding,
12 Mr. Branca, of the term "contribute"?

13 A. A donation.

14 Q. Using your understanding of the
15 word contribute, did May Construction
16 contribute any money towards the purchase of
17 48 Davids way?

18 A. No.

19 Q. Did May Construction contribute
20 any money toward the purchase of 7 Frederick
21 Court?

22 A. No.

23 Q. Did May Construction contribute
24 any money toward the renovation of 48 Davids
25 way?

□

1	A. Branca	10
---	-----------	----

2 A. No.

3 Q. And did May Construction
4 contribute any money toward the renovation of
5 7 Frederick Court?

6 A. No.

7 Q. who owns 700 Summer Street?
Page 8

Branca's deposition.txt

8 A. I do.
9 Q. And in your name, individually?
10 A. It's owned in windward Holdings
11 Corp.
12 Q. When you say you do, who owns
13 windward Holdings Corp.?
14 A. I do.
15 Q. Are you the sole owner of
16 windward Holdings Corp. at all times since its
17 inception?
18 A. No.
19 Q. Who were the owners of windward
20 Holdings Corp. since its inception?
21 A. Yuly Aronson. Myself.
22 Q. How did it come to be that you
23 were the sole owner of windward Holdings Corp.?
24 A. Mr. Aronson wanted to sell
25 700 Summer Street. I didn't want to sell

□

1 A. Branca 11
2 700 Summer Street. We put it on the market, we
3 obtained a buyer. I paid Mr. Aronson his 50
4 percent of the 700 Summer Street and the other
5 assets that he was an owner of in windward
6 Holdings.
7 Q. Is windward Holdings Corp. a
8 corporation?
9 A. Yes.
10 Q. Was Mr. Aronson a shareholder?
11 A. Yes.

Branca's deposition.txt
12 Q. when did he cease to become a
13 shareholder in windward Holdings Corp.?

14 A. I believe it was on or around
15 June and I am not sure if it was 2005 or 2006.
16 I believe it was 2005.

17 Q. Did Mr. Aronson contribute
18 monies towards the acquisition of properties
19 within windward Holdings Corp. while he was a
20 shareholder?

21 MR. GOODRICH: I am going to
22 ask for a clarification. You are
23 asking a question as a lawyer. You
24 asked is Mr. Aronson -- I just want my
25 client to know that that is a specific

□

1 A. Branca 12
2 legal question. Mr. Aronson, as
3 opposed to any other entity that he
4 may have had; okay? Just so we don't
5 have a lot of confusion later, saying,
6 well, you didn't understand the
7 question, you didn't do this and that.
8 If he owns stock in ABC Corporation
9 and he gave you a check from ABC
10 Corporation, Mr. Aronson did not give
11 you a check; ABC Corporation did.

12 You can answer the question.

13 A. You are going to have to
14 rephrase the question and get a little more
15 specific.

16 (Question read back.)
Page 10

Branca's deposition.txt

17 A. No.

18 Q. Did May Construction contribute
19 any money towards the acquisition of properties
20 that were acquired by windward Holdings?

21 A. I am not 100 percent sure.
22 Do you have any documents that you can show me
23 that could refresh my recollection?

24 Q. Can you answer my question,
25 Mr. Branca?

□

1 A. Branca 13

2 MR. GOODRICH: He did.

3 THE WITNESS: I did.

4 MR. REIS: Okay. You are not
5 sure.

6 Q. Who, other than yourself,
7 contributed money towards the acquisition of
8 properties that were obtained by windward
9 Holdings Corp.?

10 A. What properties?

11 Q. What properties did windward
12 Holdings Corp. own, Mr. Branca?

13 A. Windward Holdings Corp. owns a
14 Fire Island house, it owns a piece of land down
15 in Florida and 700 Summer Street.

16 Q. Are those the only properties
17 that windward Holdings --

18 A. I'm sorry. It owns Bedford,
19 Middle Paten Road.

20 Q. My question goes to each of

21 those properties. Branca's deposition.txt

22 what entities contributed money
23 to purchase the Fire Island home that you just
24 referred to?

25 A. I don't remember.

□

1 A. Branca 14

2 Q. what entities contributed money
3 to the Florida property that you referred to?

4 A. It was me, personally.

5 Q. Do you still own the Florida
6 home?

7 A. It's land. Yes, I do.

8 Q. At any point in time, did you
9 ask Mr. Aronson to contribute monies towards
10 expenses related to the Florida property?

11 A. No.

12 Q. At any point in time, did
13 Mr. Aronson individually contribute money
14 towards the property in Florida?

15 A. No.

16 Q. At any point in time, did any
17 entity in which Mr. Aronson has an interest
18 contribute money toward the property in
19 Florida?

20 A. No.

21 Q. With regard to the Bedford
22 property, Middle Paten Road, did Mr. Aronson
23 contribute any money individually towards the
24 acquisition or development of that property?

25 A. No.

Branca's deposition.txt

□

1 A. Branca 15

2 Q. Did Mr. Aronson's entity, May
3 Construction, contribute any money towards the
4 acquisition or development of that property?

5 A. Yes.

6 Q. How much was contributed?

7 A. I don't know.

8 Q. During what period of time was
9 money contributed?

10 A. It was contributed from the
11 acquisition through the point in time that he
12 was no longer a member of Windward Holdings.

13 Q. You don't know how much money
14 was contributed?

15 A. No.

16 Q. How were the monies paid from
17 May Construction to benefit that Bedford
18 property? Were they paid to you or were they
19 paid to an entity?

20 A. What do you mean by "entity"?

21 Q. Were the monies contributed by
22 May Construction paid to Windward Holdings?

23 A. No.

24 Q. Who were the monies paid to?

25 A. They were paid to the service

□

1 A. Branca 16

2 providers directly.

Branca's deposition.txt

3 Q. And who wrote those checks?

4 A. I did.

5 Q. Did Mr. Aronson have knowledge

6 of you writing those checks?

7 A. Yes.

8 Q. Before you wrote those checks?

9 A. Yes.

10 Q. Did you ever forge a signature

11 of Mr. Aronson on a May Construction check?

12 A. Forged his signature?

13 Q. "Forged," meaning write his

14 signature without his permission?

15 A. No.

16 Q. Did you ever sign your signature

17 on a May Construction check without the

18 knowledge of Mr. Aronson?

19 A. You have to define what you are

20 talking about. I was signatory over the

21 account. I was the controller, the vice

22 president of finance, and in that capacity for

23 May Construction, I signed 90 percent of every

24 check that went out of the office.

25 Q. But you didn't answer my

□

1 A. Branca 17

2 question.

3 A. I don't know how to answer your

4 question.

5 Q. My question is, did you sign

6 your name on May Construction checks without

7 the knowledge of Mr. Aronson?

Branca's deposition.txt

8 A. No.

9 Q. Is it your testimony under oath
10 that Mr. Aronson knew before you signed any
11 check on May Construction's behalf?

12 A. I have no way of knowing that.

13 Q. I thought that you just
14 testified that he knew.

15 Let me clarify. Did Mr. Aronson
16 know about every check you signed with your
17 name on May Construction's behalf?

18 A. I have no way of knowing what
19 Mr. Aronson knew.

20 Q. What was your procedure with
21 regard to writing checks during your tenure
22 with May Construction?

23 A. As the bills became due, the
24 bills were paid.

25 Q. Did you alert Mr. Aronson to the

□

1 A. Branca 18
2 bills that were being paid prior to them being
3 paid?

4 A. I don't believe so.

5 Q. To the best of your
6 recollection, Mr. Branca, did you sign any
7 checks on behalf of May Construction made
8 payable to your accounting firm in excess of
9 the amount that your accounting firm had
10 contracted with May Construction for accounting
11 services?

Branca's deposition.txt

- 12 A. No.
- 13 Q. And you are quite sure of that?
- 14 A. Yes.
- 15 Q. What was your contractual
- 16 relationship with May Construction with regard
- 17 to your accounting firm?
- 18 A. I had an engagement agreement
- 19 that said I would provide certain services for
- 20 a certain fee.
- 21 Q. What was the fee?
- 22 A. I would have to look at the
- 23 engagement agreement.
- 24 Q. Okay. I will show that to you
- 25 later on. Does it refresh your recollection if
-

- 1 A. Branca 19
- 2 I represent that you were contractually
- 3 committed to provide accounting services for
- 4 \$5,000 a month during your relationship with
- 5 May Construction?
- 6 A. I'm sure it changed from year to
- 7 year but \$5,000, it may have been around there.
- 8 Q. What was your understanding of
- 9 the services that your accounting firm was
- 10 supposed to provide for that \$5,000 a month?
- 11 A. I was taking care of all the
- 12 financials. Paying the bills.
- 13 Q. What else; if anything?
- 14 A. It would be in the engagement
- 15 agreement.
- 16 Q. But what is your understanding?

Branca's deposition.txt

17 A. I would like to see the
18 engagement agreement.

19 Q. But what is your understanding?

20 A. It lays it out in the engagement
21 agreement. There is no need to speculate.
22 Pull out the agreement. You said you have it
23 and we can look at it. It says point by point
24 what I was providing.

25 Q. What was your understanding,

□

1 A. Branca 20

2 Mr. Branca? If you don't answer the question,
3 I am going to ask the Judge to make you answer
4 the question.

5 A. Ask the Judge then.

6 Q. Can you tell me what your
7 understanding was of the duty of
8 A.A. Branca & Co. with regards to providing
9 accounting services to May Construction?

10 A. It's listed in the engagement
11 letter. You said you have it. We could just
12 pull it out and read through it.

13 Q. Is it your testimony that you
14 have no understanding?

15 A. No.

16 Q. What is your understanding?

17 A. Like I said earlier in the tape,
18 I was providing the accounting services for May
19 Construction.

20 Q. And you testified that you were

21 paying the bills. Branca's deposition.txt

22 A. Correct.

23 Q. Anything else?

24 A. Preparing tax returns.

25 Q. What else?

□

1 A. Branca 21

2 A. I was consulting. We had a long
3 close relationship.

4 Q. Okay. What else?

5 A. That's all I can recall.

6 Q. In some of the affidavits that
7 you have provided in this action, you have
8 indicated that you had an interest in May
9 Construction. Do you recall that?

10 A. Yes.

11 Q. Other than what you have just
12 told me you did contractually to receive \$5,000
13 per month, which you said was paying the bills,
14 preparing tax returns and consulting, what did
15 you do --

16 MR. GOODRICH: I'm going to
17 object to the question, right off the
18 bat, because he said it changed. The
19 amount of the fee changed and you just
20 said for \$5,000 a month. That was not
21 his testimony. If you're going to
22 repeat something, please repeat it
23 accurately.

24 Q. It's your testimony that the
25 accounting fees changed; correct?

Branca's deposition.txt

□

1 A. Branca 22

2 A. Yes.

3 Q. We will examine that at another
4 point in time.

5 what did you do to warrant an
6 interest in May Construction, other than what
7 you just described your accounting firm did to
8 warrant the payment of the accounting fees?

9 A. I brought certain projects to
10 May Construction.

11 Q. What were those projects?

12 A. There was a waste water
13 treatment plant in Williamsburg Ridge. There
14 was a labor contract with a condo management
15 company. There were spec houses that were
16 built. I brought in private work, Yuly brought
17 in public work.

18 Q. Define for me what you have
19 stated in your affidavit as the interest you
20 held in May Construction.

21 A. I had a profit interest in May
22 Construction to the extent of 50 percent.

23 Q. Was your profit interest limited
24 to those projects that you brought in?

25 A. Yes.

□

1 A. Branca 23

2 Q. Did you receive payments from

Branca's deposition.txt

3 May Construction with regard to other projects

4 that you did not, quote unquote, bring in?

5 A. No.

6 Q. Was your interest, as you

7 defined it, memorialized in writing?

8 A. Once upon a time it was.

9 Q. Do you have that document?

10 A. No, I don't.

11 Q. What happened to that document?

12 A. I have no idea.

13 Q. What did that document say?

14 A. It was a formal agreement that

15 memorialized our relationship, Yuly and I, in

16 May Construction.

17 Q. Was that document notarized?

18 A. No.

19 Q. Who drafted that document?

20 A. We both drafted the document.

21 Q. And you do not possess a copy of

22 that document?

23 A. No, I don't.

24 Q. Mr. Branca, did you report your

25 50 percent interest in the profits, as you

□

1 A. Branca 24

2 testified, in your tax returns?

3 A. I don't understand the question.

4 Q. Did you report the 50 percent

5 interest that you just testified you held in

6 May Construction on your tax return, as a

7 shareholder in May Construction?

Branca's deposition.txt

8 A. I wasn't a shareholder of May
9 Construction.

10 Q. Did you reflect your ownership
11 interest in May Construction in any way on your
12 tax return?

13 A. All of the income that I
14 received was reported on my tax returns.

15 Q. In which manner?

16 A. They would run through various
17 LLC's. Any of the accounting fees that were
18 cut to me were picked up by my personal tax
19 returns. The LLC's are pass-through entities.
20 The net would come through my personal tax
21 return.

22 Q. You just testified that the
23 interest was paid through the LLC's.
24 was that your agreement with
25 Mr. Aronson in the document that you just

□

1 A. Branca 25
2 testified about?

3 A. To the best of my recollection,
4 the document wasn't specific on how the payment
5 would be made. It just said that this was the
6 profit arrangement that we had.

7 Q. What were the names of the LLC's
8 that you received your payments through?

9 A. One was FCM Group. One was
10 windward Holdings. Landmark Construction.

11 Q. Is that it?

12 A. Branca's deposition.txt
13 To the best of my knowledge,
14 that's it.

15 Q. Of the projects that you
16 mentioned to me just previously, which one of
17 the LLC's did you receive payment through?

18 A. I don't remember.

19 Q. Well, what was the reasoning, if
20 any, behind your receiving payment from FCM
21 Group versus Windward Holdings versus Landmark
22 Construction with regard to those projects?

23 A. I don't remember.

24 Q. Were they random?

25 A. At the time they had a purpose.
I don't remember what the purpose was. This

□

1 A. Branca 26
2 goes back to 2005.

3 Q. Is FCM Group a corporate entity
4 or an LLC?

5 A. It's a corporation.

6 Q. And who were the shareholders
7 since the inception of FCM Group?

8 A. It was myself.

9 Q. Let's talk a little bit about
10 Landmark Construction at this point. Is that a
11 corporation or an LLC?

12 A. It's a corporation.

13 Q. Who were the shareholders of the
14 Landmark Corporation since its inception?

15 A. It was myself.

16 Q. At all times?

Branca's deposition.txt

17 A. Yes.

18 Q. Mr. Branca, you know you are
19 under oath; is that correct?

20 A. Correct.

21 Q. Who was the president of
22 Landmark?

23 A. Jan W-A-W-A-K.

24 Q. Did you at any point in time, in
25 any documents, to the best of your

□

1 A. Branca 27

2 recollection, indicate that Jan wawak was the
3 100 percent shareholder of Landmark
4 Construction?

5 A. Yes.

6 Q. You just testified that you were
7 the only shareholder of Landmark Construction
8 at all times. Do you want to change your
9 testimony?

10 A. No.

11 Q. Explain to me the
12 differentiation between your statement that you
13 were the only shareholder of Landmark and your
14 statement that Jan wawak was the sole
15 shareholder.

16 A. When May Construction was going
17 down the toilet, Yuly and I decided to use
18 Landmark Construction -- it was a company that
19 I had sitting on the shelf that I had set up
20 for somebody and they never paid me -- to try

Branca's deposition.txt

21 to establish a new construction company and
22 continue doing business. Money was taken out
23 of May, joint funds, put into Landmark
24 Construction and we put Jan Wawak as the
25 president and tried to obtain more City work.

□

1 A. Branca 28

2 Q. I'm going to break that down.

3 You just testified that joint
4 monies were taken out of May Construction,
5 Mr. Branca. Did you have monies in May
6 Construction?

7 A. Yes.

8 Q. That you contributed personally?

9 A. The profits that were derived
10 from the projects that I brought in, I didn't
11 take the money out of May. I left it in there.

12 Q. Did you reflect in the
13 accounting documents of May Construction that
14 you were entitled to those monies that were
15 being held by May Construction?

16 A. The monies were owed by Yuly
17 Aronson, so it was an off balance-sheet item
18 that didn't have to be reflected on the books
19 of May Construction.

20 Q. They were owned by Yuly Aronson?

21 A. They were owed. Owed.

22 Q. And you are testifying that that
23 did not need to be reflected --

24 A. On the books of May
25 Construction. Yes.

Branca's deposition.txt

□

1 A. Branca 29

2 Q. I want to understand that.

3 A debt to somebody does not need to be
4 reflected on the books of May Construction?

5 A. A debt to an individual does not
6 have to be reflected on the books of May
7 Construction.

8 Q. How did you reflect that debt to
9 you?

10 A. We had a sheet where we would
11 keep track of the "due to's" and the "due
12 from's." Every month we would review this
13 sheet, agree on a balance, carry it forward.

14 Q. Did you maintain your accounting
15 practice through the use of the computer system
16 at the time you had a relationship with
17 Mr. Aronson?

18 A. Did I maintain my accounting
19 practice --

20 Q. Through the use of computers?

21 A. What do you mean?

22 Q. Did you use computers for
23 maintaining the books and records of May
24 Construction?

25 A. Yes.

□

1 A. Branca 30

2 Q. Why, Mr. Branca, did you use a

Branca's deposition.txt

3 sheet to reflect the information regarding your
4 relationship with Mr. Aronson on the various
5 projects?

6 A. Because it had nothing to do
7 with May Construction. It had to do with Yuly
8 Aronson.

9 Q. Did you have this type of
10 relationship with other clients of yours?

11 A. No.

12 Q. Were you a certified public
13 accountant for May Construction?

14 A. Yes.

15 Q. Do you believe that there was a
16 conflict between your services as the
17 independent certified public accountant for May
18 Construction and your undisclosed ownership
19 interest in May Construction?

20 A. It's a grey area.

21 Q. Tell me more about that grey
22 area.

23 MR. GOODRICH: First of all, I
24 don't think he ever testified that he
25 was the owner. Second of all, you

□

1 A. Branca 31
2 mischaracterized his testimony, again.
3 He said he had profit interest. He
4 didn't say ownership interest.

5 Q. Do you believe that there was a
6 conflict between your services as a certified
7 public accountant for May Construction and your

Branca's deposition.txt

8 undisclosed ownership interest in May
9 Construction?

10 A. I didn't have an ownership
11 interest in May Construction.

12 Q. What was your interest?

13 A. I had a profit interest. The
14 profit interest would be from Mr. Aronson, who
15 was the sole owner of May Construction, to me.

16 Q. Do you believe, and we will talk
17 about it more in front of Judge Karas --

18 MR. GOODRICH: You know, I don't
19 need the veiled threats. You have
20 asked him now three times if he
21 understands he's under oath. He took
22 the oath. He's a pretty smart guy; he
23 knows it. He doesn't need to be told
24 we will discuss it further in front of
25 Judge Karas; okay? He knows we have a

□

1 A. Branca 32
2 hearing. So, we really don't need to
3 go into that kind of veiled
4 intimidation; okay? This is a
5 deposition.

6 Q. Do you believe that there was a
7 conflict of interest between your services as a
8 certified public accountant for May
9 Construction and, as you described it, your
10 profit interest in May Construction?

11 A. No.

Branca's deposition.txt
12 Q. Did you disclose your profit
13 interest to the bonding companies?

14 A. No.

15 Q. Did you disclose your profit
16 interest to any of the vendors?

17 A. No.

18 Q. During the year 2006, did May
19 Construction run at a profit or a loss?

20 A. I don't remember.

21 Q. Do you recall if you took monies
22 out of May Construction while it was running at
23 a deficit?

24 A. I don't remember.

25 Q. Now, let's go back to Landmark

□

1 A. Branca 33

2 Construction. You testified that you were the
3 100 percent shareholder and then you testified
4 about Jan Wawak. Do you recall that?

5 A. Correct.

6 Q. On what documents did you, to
7 your recollection, place Jan Wawak as the 100
8 percent shareholder of Landmark Construction?

9 A. There was a document that was
10 filed with New York City.

11 Q. Do you believe, Mr. Branca, that
12 your representation or that your actions in
13 filing that with New York City was fraudulent?

14 A. I didn't sign it.

15 Q. Did you prepare it?

16 A. I don't recall.

Branca's deposition.txt

17 Q. But you had knowledge at the
18 time that Mr. Wawak was not the 100 percent
19 shareholder of Landmark? Isn't that correct?

20 A. Correct.

21 Q. Staying with Landmark, did there
22 come a time when you were responsible for the
23 removal of approximately \$252,000 from an
24 account at Prestige Financial Center of New
25 York in the name of Landmark Construction?

□

1 A. Branca 34

2 A. The removal? The funds were
3 transferred from Prestige to Smith Barney.

4 Q. Were you responsible for that?

5 A. Yes.

6 Q. Where, to the best of your
7 knowledge, did that money come from that was
8 deposited into Prestige Financial Center of
9 New York?

10 A. May Construction.

11 Q. Did you know about that?

12 A. Yes.

13 Q. Did you sign the check that
14 was --

15 A. I don't believe I did but I'm
16 not 100 percent sure.

17 MR. GOODRICH: Let him finish
18 the question. The record is not clear
19 as to what check you are talking
20 about.

Branca's deposition.txt

□

1 A. Branca 36

2 Q. How did you come to learn of
3 Prestige?

4 A. That is the area where Yuly
5 maintains all of his money.

6 Q. What was the purpose of you
7 setting up, according to your testimony, the
8 Prestige account?

9 A. The question was asked and
10 answered.

11 Q. It was not. What was the
12 purpose of you, as you testified, of setting up
13 the Prestige account?

14 A. We were looking to set up
15 another construction company outside of May in
16 order to continue doing work in New York City.

17 Q. That doesn't answer my question
18 as to why you set up an account at Prestige.

19 A. Then the answer to your question
20 is, I don't remember.

21 Q. You have testified that you, and
22 I emphasize you, set up Prestige.

23 Do you have any of the documents
24 representing the opening of the account at
25 Prestige?

□

1 A. Branca 37

2 A. No.

3 Q. why not? Branca's deposition.txt

3 Q. why not?

4 A. I don't know.

5 Q. Is your practice to maintain
6 copies of documents of all accounts that you
7 open?

8 A. No.

9 Q. what do you do with them?

10 A. Sometimes they are saved in a
11 file, sometimes they are not. But the
12 documents, that should be easy to obtain.
13 You could just subpoena Prestige.

14 Q. I am just asking you questions
15 about the retention of the documents.

16 It's your testimony that you do
17 not have them; correct?

18 A. Correct.

19 Q. And you don't know who signed
20 the checks that were used to open that account;
21 correct?

22 A. Correct.

23 Q. What happened to the monies in
24 this Prestige account?

25 A. The monies in the Prestige

1

1	A. Branca	38
---	-----------	----

2 account, when we realized that we were not
3 going to be able to set up this new company,
4 Yuly and I sat down, he said take the money,
5 put it on the sheet. And at that time I opened
6 up an account at Landmark, a Landmark
7 Construction account at Smith Barney, and I

Branca's deposition.txt

8 transferred the money from one account to
9 another.

10 Q. why did you do that?

11 A. Because I don't do business with
12 Prestige. Yuly does business with Prestige.

13 Q. But it was May Construction
14 money you testified --

15 A. No, I testified that it was
16 joint money.

17 Q. Did you take the joint money and
18 move it to Smith Barney?

19 A. Correct.

20 Q. Did you tell Mr. Aronson that
21 you were doing that?

22 A. Yes, I did.

23 Q. And how much of that joint money
24 was his, in your testimony, and how much was
25 yours?

□

1 A. Branca 39

2 A. Half.

3 Q. And after you took the money and
4 moved it to Smith Barney, where did the money
5 go from Smith Barney?

6 A. I shut down the account.
7 I don't remember which account; I have other
8 accounts at Smith Barney. It went to another
9 account in Smith Barney.

10 Q. Are you familiar with an account
11 named the Branca Family Trust?

Branca's deposition.txt
12 A. Yes.

13 Q. Do you have any reason to
14 believe that the money was transferred to that
15 account?

16 A. It may have been.

17 Q. Why would you have moved the
18 monies that were joint monies, according to
19 your testimony, to a joint family account?

20 A. Once the money gets put on the
21 sheet, we agreed to any transfers of funds.
22 The sheet memorializes who is owed what and it
23 keeps a running balance. Once the money is on
24 the sheet, Mr. Aronson's piece has been
25 recorded and he no longer has a piece of that

□

1 A. Branca 40
2 money. And at that time, I can do whatever I
3 want with it.

4 Q. But you are not answering my
5 question, again. I want to know, the joint
6 money that went from Prestige to an account
7 that you set up at Smith Barney and then went
8 to the Branca Family Trust. Would you agree
9 with me?

10 A. I would have to see the
11 documents.

12 MR. GOODRICH: He said it may
13 have.

14 Q. I'm going to show you the
15 documents.

16 MR. GOODRICH: Then maybe
Page 34

Branca's deposition.txt

17 that's a safer way to do it. We have
18 had about three or four different
19 occasions when he's asked to see
20 stuff --

21 MR. REIS: I will do it when I
22 want to.

23 MR. GOODRICH: I understand
24 but then don't mischaracterize what he
25 said.

□

1 A. Branca 41

2 Q. Do you have any reason to
3 believe that the monies that went from Prestige
4 to Smith Barney did not go into the Branca
5 Family Trust?

6 A. I don't know.

7 Q. Where are the sheets that you
8 have been referring to?

9 A. The sheets were with the paid
10 bills in May Construction's files that Yuly
11 took out, five or six boxes of documents out of
12 the office, when he moved out.

13 Q. Is it your testimony that you
14 have no sheets other than what you have
15 produced to me thus far?

16 A. Correct.

17 Q. As an accountant, what is your
18 retention policy for documents you prepare for
19 a client or partner of yours?

20 A. There are no rules; to the best

21 of my knowledge. Branca's deposition.txt

22 Q. My question was, what was your
23 policy?

24 A. My policy concerning the sheet?

25 Q. Regarding your retention of

□

1 A. Branca 42
2 documents.

3 A. It depends on the document.

4 Q. What was your retention policy
5 with regard to these sheets?

6 A. Once we agreed on the number,
7 and we would have our monthly meeting, the
8 balance would get carried forward to the next
9 month's sheet. Those sheets would get filed in
10 the paid bills with May Construction. And the
11 retention for May Construction was what is
12 required for the IRS, which is four years.

13 Q. When did you last perform
14 services for May Construction?

15 A. I believe that was maybe in
16 2007, sometime, but I'm not 100 percent sure.

17 Q. Where are the documents?

18 A. The documents for 2007? They
19 were all taken out by Mr. Aronson.

20 Q. Do you have an obligation to
21 retain the documents that you prepare for
22 clients?

23 A. Negative.

24 Q. I don't understand what
25 "negative" means.

Branca's deposition.txt

□

1 A. Branca 43
2 A. Negative means no.
3 Q. Did you retain copies of those
4 documents?
5 A. No.
6 Q. were all of your documents
7 handwritten for May Construction?
8 A. I would say most of them.
9 MR. GOODRICH: You are talking
10 about the sheets or all documents?
11 MR. REIS: The sheets.
12 A. The sheets are all handwritten.
13 Q. Other documents that you
14 prepared for May Construction, are they
15 handwritten or on the computer?
16 A. What documents?
17 Q. Other documents that you
18 prepared for May Construction.
19 A. Be more specific.
20 Q. what documents did you prepare
21 for May Construction during your services as a
22 certified public accountant?
23 A. Tax returns.
24 Q. where are those tax returns?
25 A. They are on the computer.

□

1 A. Branca 44
2 Q. Did you produce them in this

Branca's deposition.txt

3 action?

4 A. Yes, I did.

5 Q. What other documents did you
6 prepare?

7 A. For May Construction?
8 That's it.

9 Q. Did you prepare a general
10 ledger?

11 A. The bookkeeper prepared the
12 general ledger.

13 Q. Did the bookkeeper work for you?

14 A. The bookkeeper worked for May
15 Construction. She works for me now.

16 Q. The bookkeeper was an employee
17 of May Construction?

18 A. Yes.

19 Q. Did you pay the bookkeeper any
20 compensation?

21 A. Depending on -- You would have
22 to give me a time frame.

23 Q. During the time period that you
24 were the certified public accountant for May
25 Construction.

□

1 A. Branca 45

2 A. It changed. Back in 2005,
3 before 2005, she was on my payroll. 2005 to
4 the end of May Construction, she was being paid
5 by May Construction.

6 Q. Did Mr. Aronson know he was
7 paying her as an employee of May Construction?

Branca's deposition.txt

8 A. Mr. Aronson reviewed bank
9 statements every month.

10 Q. Do you know if Mr. Aronson knew
11 that he was paying -- what was the person's
12 name?

13 A. Lorraine Pellegrino.

14 Q. Do you know if Mr. Aronson knew
15 that Lorraine Pellegrino was being paid by May
16 Construction as an employee?

17 A. She was not an employee. She
18 was a 1099.

19 Q. So she was an independent
20 consultant?

21 A. Correct.

22 Q. Where did she work?

23 A. 700 Summer Street.

24 Q. Prior to 2005, she was an
25 employee of your accounting firm?

□

1 A. Branca 46

2 A. Correct.

3 Q. And where are the documents that
4 she worked on prior to 2005, given your
5 statement of this four-year retention rule?

6 A. Mr. Aronson was given a copy of
7 the general ledger.

8 Q. Where is the copy that you would
9 have maintained pursuant to your requirement to
10 maintain documents --

11 A. I don't have to maintain source

Branca's deposition.txt

12 documents. I have to maintain tax returns.
13 The document retention is the client's document
14 retention, not the accountant's document
15 retention.
16 Q. What about the general ledger?
17 A. Not required.
18 Q. Did you retain it?
19 A. No.
20 Q. What did you do with it?
21 A. The software was put on
22 Mr. Aronson's computer and he has all the
23 records on his computer, on his laptop.
24 Q. Do you know Lorraine
25 Pellegrino's address?

□

1 A. Branca 47
2 A. No.
3 Q. Does she still work with you?
4 A. Yes.
5 Q. What was the reasoning behind
6 her changing her status as an employee of your
7 accounting firm to become an independent
8 consultant of May Construction?
9 A. The independence rules changed
10 for CPA's in 2005. We were no longer allowed
11 to provide bookkeeping services for clients and
12 do attest services; issue reports that we
13 signed. So at that point in time, to maintain
14 my independence, we put Pellegrino on the books
15 of May Construction.
16 Q. Was there a discussion with

Branca's deposition.txt

17 Mr. Aronson at any point in time about you
18 obtaining a shareholder interest in May
19 Construction?

20 A. There were discussions.

21 Q. And what became of those
22 discussions?

23 A. I don't recall.

24 Q. It is your testimony that
25 Mr. Aronson is no longer a member of windward
□

1 A. Branca 48

2 Holdings; is that correct?

3 A. A shareholder of windward
4 Holdings.

5 Q. Shareholder; right.

6 A. Yes.

7 Q. Do you continue to ask
8 Mr. Aronson for contributions for that entity?

9 A. No.

10 Q. Has your attorney, to the best
11 of your knowledge, asked on your behalf for
12 contributions?

13 A. Mr. Aronson has a 50 percent
14 interest in Middle Paten Road. Middle Paten
15 Road is in the title of windward Holdings.
16 That's the only way I can answer your question.
17 And Mr. Aronson owes development costs for
18 Middle Paten Road.

19 Q. That were incurred as of when?

20 A. Incurred from 2006 to present.

21 Q. Mr. Aronson is no longer a
22 member of Windward Holdings.

23 A. Mr. Aronson has an interest in a
24 piece of property.

25 Q. Is that documented or is that

1 A. Branca 49
2 just another understanding, if I may -- let me
3 finish, please -- Is that just another
4 understanding between you and Mr. Aronson?

5 A. If Mr. Aronson doesn't want to
6 have an interest in the property, I would
7 gladly stop asking him for money for the
8 property.

9 Q. Would you please answer my
10 question? Is that interest documented or is
11 that just a verbal understanding between you
12 and Mr. Aronson?

13 A. It's a verbal understanding
14 between Mr. Aronson and myself. And being the
15 honest person that I am, I give him his piece
16 of what he has due.

17 MR. REIS: I ask that be
18 stricken as not responsive.

19 Q. who owns the Bear Hill property?

20 A. Bear Hill property is an LLC,
21 and it is owned by Mr. Aronson and myself,
22 50/50.

23 Q. Is that documented?

24 A. Yes, it is.

25 Q. Now, you understand that the

Branca's deposition.txt

□

1 A. Branca 50

2 Court in this action has restrained certain
3 accounts from transactions. Have any accounts
4 that have been restricted been involved in any
5 transactions since the TRO?

6 A. No.

7 Q. Did you perform any accounting
8 functions for May Construction in 2007?

9 A. I am sure I did.

10 Q. What were those services?

11 A. I don't remember.

12 Q. Do you know what certified
13 payrolls are?

14 A. Yes.

15 Q. Did you prepare certified
16 payrolls for May Construction?

17 A. Certified payrolls are --

18 Q. I want you to answer the
19 question.

20 A. Give me a time period.

21 Q. You don't need a time period,
22 but the time period that you served as a
23 certified public accountant for May Construction.

24 A. Sometimes.

25 Q. When?

□

1 A. Branca 51

2 A. I don't recall.

Branca's deposition.txt
3 Q. Was it towards the end of your
4 relationship with May Construction?

5 A. It was on and off during the
6 whole relationship of May Construction.

7 Q. Why was it on and off?

8 A. I am not 100 percent sure
9 whether they were prepared by me or Lorraine,
10 the bookkeeper. She handled the payroll.

11 Q. Well, when Lorraine prepared
12 them, was she employed by you or was she a 1099
13 with Mr. Aronson?

14 A. With Mr. Aronson.

15 Q. So any certified payrolls that
16 were done by Lorraine, by your testimony, must
17 have been prepared after 2005; correct?

18 A. I couldn't say that with
19 100 percent certainty.

20 Q. It was your testimony that
21 Lorraine was a 1099 after 2005?

22 A. Yes.

23 Q. So if she prepared any certified
24 payrolls it was while she was a 1099 for
25 May Construction?

□

1 A. Branca 52

2 A. If she prepared any payrolls,
3 yes.

4 Q. Is she, legally, to the best of
5 your knowledge as a certified public
6 accountant, allowed to certify payrolls?

7 A. You don't have to be -- You
Page 44

Branca's deposition.txt

8 could be an attorney and certify payrolls.

9 Q. Answer my question, sir.

10 A. You have to repeat the question.

11 Q. Was she legally allowed to

12 certify payrolls?

13 A. She wasn't certifying payrolls.

14 Q. I had asked you had she

15 certified payrolls?

16 A. Do you know what a certified

17 payroll is?

18 Q. What don't you define for the

19 record what a certified payroll is.

20 A. A certified payroll is a

21 statement by the owner saying that he paid

22 proper wages.

23 Q. And who signs that document?

24 A. The owner of the company,

25 Mr. Aronson.

□

1 A. Branca 53

2 Q. Now, you testified that you

3 prepared certified payrolls; correct?

4 A. Correct.

5 Q. When you prepared them, did you

6 submit them to Mr. Aronson for his signature?

7 A. Absolutely.

8 Q. Did he rely upon your

9 preparation as a certified public accountant?

10 A. We're not going down this road.

11 MR. GOODRICH: Objection.

12 Branca's deposition.txt
MR. REIS: Answer the question.

13 MR. GOODRICH: Well, objection.

14 It calls for the operation of his
15 mind. Don't answer the question.

16 How would he know if he relied on it
17 or not?

18 Q. Did Mr. Aronson have the
19 ability, in your mind, to look at the payroll,
20 the payroll documents that you provided to him,
21 to determine their accuracy?

22 A. Yes.

23 Q. Did he take the time, based upon
24 your interactions with him, to do that?

25 A. Based on my knowledge of

1

1 A. Branca 54
2 Mr. Aronson, yes.

3 Q. Did he do that?

4 A. I can't tell you whether he did
5 or not.

6 Q. What was your purpose of
7 preparing certified payrolls if Mr. Aronson
8 could do it himself?

9 A. what's the purpose of me doing
10 bookkeeping when Mr. Aronson could do it
11 himself?

12 Q. My question to you is, did he
13 pay you as your compensation to prepare
14 certified payrolls?

15 A. Again, we go back to the
16 engagement letter.

Branca's deposition.txt

17 MR. GOODRICH: Let me get
18 something straight here because you
19 are confusing the record.
20 The preparation of a document is one
21 thing. The certification is another
22 thing. I think you are commingling
23 the two. If I prepare a piece of
24 paper that says I certify it, and then
25 I hand it to the guy to certify it, my
□

1 A. Branca 55
2 understanding is that he is saying
3 that he certified it. You are saying
4 "prepared a certification," which
5 means you prepared a complete
6 document including the certification.
7 I'm going to ask you to be a little
8 more clear. Did he prepare a
9 piece of paper that was then certified
10 by the owner, or did he prepare a
11 certification that was done,
12 concluded?

13 MR. REIS: Are you done?

14 MR. GOODRICH: Yes. I want an
15 answer.

16 Q. My question to you is, did you
17 prepare documents that were submitted as
18 certified payrolls by May Construction?

19 A. I prepared documents that were
20 titled certified payrolls.

Branca's deposition.txt

21 Q. And you prepared them

22 completely; correct?

23 A. I don't know. I don't know what

24 "completely" means.

25 Q. Did you prepare the entire

□

1 A. Branca 56

2 document or did others prepare them?

3 A. As I said before, at certain

4 times I prepared them. At certain times

5 Lorraine prepared them. At no time did either

6 one of us sign them.

7 Q. Understood.

8 A. Okay.

9 Q. Was preparing those documents

10 part of the services --

11 A. Again, pull out the engagement

12 letter.

13 Q. Listen carefully and answer the

14 question. Was the preparation of those

15 documents part of the services that your firm

16 provided, to the best of your understanding?

17 A. I couldn't answer the question

18 without looking at the engagement letter.

19 Q. That's your answer?

20 A. It's going to be my answer the

21 whole day.

22 Q. Did you, in your accounting

23 sheets with Mr. Aronson, did you charge him

24 interest on money that you had advanced?

25 A. When Mr. Aronson refused --

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Branca's deposition.txt

□

1 A. Branca 57

2 Q. Can you answer my question;
3 yes or no?

4 A. Give me a time frame.

5 Q. At any time.

6 A. Yes.

7 Q. Did you reflect it on your tax
8 return as interest?

9 A. It's only interest if you
10 collect it. You, me, Pete, Yuly have expenses.
11 As tax payers, when you collect the money, you
12 have income.

13 Q. In your accounting with
14 Mr. Aronson, did any of the money that you
15 received from him constitute interest?

16 A. No.

17 Q. Under what agreement with
18 Mr. Aronson did you charge him interest?

19 A. I took the only written
20 agreement that we had which was the Bear Road
21 agreement. The Bear Road agreement has a
22 clause in it that entitles interest for
23 delinquent capital contributions.

24 Q. And you applied that to all the
25 investments?

□

1 A. Branca 58

2 A. I applied it only to two

Branca's deposition.txt

3 investments that we had together; the Middle
4 Paten Road and the Bear Hill property.

5 Q. But Middle Paten Road isn't
6 under the Bear Hill agreement; it it?

7 A. No, it's not.

8 MR. REIS: All right. We have
9 been here an hour. Let's take a short
10 break.

11 MR. GOODRICH: What's your
12 definition of a short break?

13 MR. REIS: Ten minutes.

14 (Break taken.)

15 Q. Mr. Branca, during your services
16 as certified public accountant for May
17 Construction and during the entire time that
18 you held what you deemed to be a profit
19 interest in May Construction, tell me about
20 some of the forms that were submitted to the
21 State of New York on behalf of May
22 Construction.

23 A. I don't know what you mean.

24 Q. What forms did you prepare for
25 submission to the State of New York?

□

1 A. Branca 59

2 A. I don't know.

3 Q. You don't know or you don't
4 remember?

5 A. I don't know.

6 Q. Did May Construction apply for
7 any loans during your relationship?

Branca's deposition.txt

8 A. Yes.

9 Q. What banks did they apply for
10 loans through?

11 A. Bank of New York. Wells Fargo.
12 I don't recall anything else.

13 Q. And what's your recollection of
14 the amounts that were applied for?

15 A. The Bank of New York is a
16 \$400,000 loan. And Wells Fargo was, I think it
17 was maybe a hundred, hundred-fifty, maybe it
18 was two; I don't recall.

19 Q. Did you prepare documents for
20 the submission?

21 A. I don't recall. If you have
22 them I could take a look at them.

23 Q. If not you, who would have
24 prepared financial documents for submission of
25 those loans; if you know?

□

1 A. Branca 60

2 A. I don't.

3 Q. Do you know if Mr. Aronson may
4 have?

5 A. He may have. He applies for his
6 own mortgages. That's a financial document.

7 MR. REIS: Strike as not
8 responsive.

9 MR. GOODRICH: Please don't.
10 You asked him the question and
11 he answered the question.

Branca's deposition.txt

17 I would have provided it to you.

18 Q. Did you get a copy of it?

19 A. I don't recall.

20 Q. Tell me what documents do you
21 possess relating to FCM, Windward Holdings and
22 Bear Hill.

23 MR. GOODRICH: Can we have it
24 one question at a time, please.

25 MR. REIS: Absolutely.

□

1 A. Branca 62

2 Q. What documents do you have
3 regarding FCM?

4 A. As far as what?

5 Q. What documents do you possess?

6 A. That's a pretty open-ended
7 statement.

8 Q. Do you have vendor invoices?

9 A. For FCM?

10 Q. Yes.

11 A. No.

12 Q. Do you have loan applications?

13 A. No.

14 Q. Do you have bank statements?

15 A. FCM is no longer in business.

16 So for FCM I have got the agreement that Yuly
17 and I signed when we did the renovation on his
18 house using joint funds and getting my piece of
19 this money back.

20 Q. Did you produce that document to

Branca's deposition.txt

21 me?

22 A. Yes, I did.

23 Q. You did?

24 A. Yes, I did.

25 MR. REIS: I don't believe you

□

1 A. Branca 63

2 did but I will ask your attorney to
3 produce that document.

4 MR. GOODRICH: It was produced
5 and I have made reference to it
6 before.

7 THE WITNESS: And we have the
8 originals.

9 Q. What documents do you have
10 relating to windward?

11 A. I have the buy-out when I bought
12 Yuly's share of windward Holdings.

13 Q. What else?

14 A. Tax returns. Invoices, checks,
15 bank statements.

16 Q. Surveys?

17 A. All the paperwork was provided
18 to you; surveys, correspondence for the
19 subdivision. And this pertains to the one
20 project in windward Holdings, a project that
21 Mr. Aronson has an interest in.

22 Q. You just testified that you
23 provided checks relating to windward; is that
24 correct?

25 A. Yes. And we have the
Page 54

Branca's deposition.txt

□

1 A. Branca 64

2 development costs, canceled checks and
3 invoices.

4 Q. Is it your testimony that you
5 provided that to me?

6 A. I believe we did.

7 MR. REIS: I don't believe you
8 did but we will take that up with your
9 attorney at another time.

10 Q. While Mr. Aronson was a
11 shareholder of windward, what were the
12 projects?

13 A. There were none.

14 Q. Just one?

15 A. There were none.

16 Q. There were none? I'm not clear
17 then. What did you buy him out of? His
18 interest in what?

19 A. We bought 700 Summer Street.

20 Q. And that was not a project?

21 A. That was not a project, no.

22 Q. And what does windward Holdings
23 own right now?

24 A. Flip to your page one. It was
25 asked and answered.

□

1 A. Branca 65

2 Q. Can you answer it again?

Branca's deposition.txt

3 A. It owns property in Florida, raw
4 land. It owns 700 Summer Street. It owns
5 Middle Paten Road. And that's it.

6 Q. And when did it acquire Middle
7 Paten Road?

8 A. It acquired Middle Paten Road --
9 it was a contract vendee in 2004, say, and the
10 acquisition was done in 2006.

11 Q. And that was after you --

12 A. Correct.

13 Q. Let me finish. That was after
14 you acquired Mr. Aronson's interest in Windward
15 Holdings, according to your testimony?

16 A. Correct.

17 Q. And is it your testimony that no
18 demands have been made of Mr. Aronson for
19 expenses incurred in Middle Paten Road?

20 A. I'm sorry?

21 Q. Is it your testimony that no
22 demands have been made of Mr. Aronson for
23 contributions relating to expenses of Middle
24 Paten Road?

25 A. No. There have been demands for

□

1 A. Branca 66
2 expenses related to the development of Middle
3 Paten Road.

4 Q. Can you explain to me how that
5 can be as you just testified that Mr. Aronson
6 was not an owner of Windward Holdings when you
7 acquired Middle Paten Road?

Branca's deposition.txt

8 A. Middle Paten Road, we were a
9 contract vendee when we were together.

10 Q. when you say "we," who do you
11 mean?

12 A. Mr. Aronson and myself.

13 Q. Under what corporate entity?

14 A. Under Windward Holdings. When
15 it came time to close on the property, we had a
16 couple of choices. We could walk away from our
17 down payment and the money that we put into the
18 project already. We could close on it, set up
19 a new entity. This meant that we had to go
20 through all the applications again. Or we
21 could close on Windward Holdings and we had an
22 agreement that you are the 50 percent on this
23 piece of property. We opted to take the easy
24 path and close on Windward Holdings. The
25 contract was in Windward Holdings, the permits

1

1 A. Branca 67
2 had been filed under windward Holdings and the
3 work was in process while we were contract
4 vendee. And that's why demands were made of
5 Mr. Aronson for the development costs.

6 And, again, if he doesn't want
7 to have a piece of the project, I will extract
8 those costs and take them out of what he owes
9 me. That's not a problem.

10 Q. Do you have all the documents
11 relating to that project?

12 Branca's deposition.txt
12 A. Correct.

13 Q. Good. After Lorraine Pellegrino
14 became a 1099 for May Construction, did you
15 adjust your accounting fees, since the services
16 that she had provided previously through your
17 accounting firm were no longer being provided?

18 A. No.

19 Q. Did you discuss that with
20 Mr. Aronson?

21 A. No.

22 (Letter dated 12/16/06, 1 pg.,
23 marked Plaintiff's Exhibit 1 for
24 identification.)

25 MR. REIS: After you have had an

□

1 A. Branca 68
2 opportunity to look at this, let me
3 know.

4 Q. Do you recognize that document?

5 A. Yes.

6 Q. What is the date on this
7 document?

8 A. December 16th, 2006.

9 Q. Is that your signature?

10 A. Yes.

11 Q. Can you tell me how this
12 document came into existence?

13 A. It was a document drafted by me.
14 I sat down with Yuly when his company was going
15 down the toilet and I resigned.

16 Q. When you say it was going down

Branca's deposition.txt

17 the toilet, you had a profit interest in that
18 entity, didn't you?

19 A. I had a profit interest in the
20 profit of the company; yes.

21 Q. Did you take any responsibility
22 for the profit or loss of that company?

23 A. Absolutely not.

24 Q. Were you involved in any of the
25 deals that flowed through that company?

□

1 A. Branca 69

2 A. Of course.

3 Q. Were you responsible for any of
4 the vendor relationships?

5 A. No.

6 MR. GOODRICH: What
7 responsibility? Define
8 "responsibility." He said before he
9 paid bills. Are you talking about
10 something above and beyond that
11 requirement to pay bills or something
12 of that nature?

13 MR. REIS: Did you understand my
14 question?

15 THE WITNESS: It's kind of a
16 broad question.

17 Q. Did you introduce any of the
18 vendors to May Construction for work on any of
19 the projects?

20 A. No.

Branca's deposition.txt
21 Q. Did any of the projects that you
22 introduced to May Constructions result in
23 losses to May Construction?

24 A. No.

25 Q. What involvement did you have

□

1 A. Branca 70

2 after the introduction of some of those
3 projects to May Construction other than
4 preparing financials?

5 A. None.

6 Q. No engineering input?

7 A. No.

8 Q. Tell me how this document shown
9 in Exhibit 1 came to be.

10 A. January 2007, I no longer wanted
11 to be the accountant for May Construction.

12 Q. January 2007?

13 A. Well, it says, "effective
14 January 1st, 2007."

15 Q. And the date of the document is
16 December 16th, 2006?

17 A. Correct.

18 Q. The date of the document is
19 December 16th, 2006?

20 A. Yes.

21 Q. So your testimony is, as of
22 January 1st, 2007, you no longer desired to
23 work with the company?

24 A. That's what the letter says.

25 Q. And how did it come that

Branca's deposition.txt

□

1 A. Branca 71

2 Mr. Aronson signed this document?

3 A. We had a meeting in the office,
4 my office, and we sat down. I went through my
5 file. I gave him one of these. I gave him a
6 bill. And I gave him a new engagement letter.

7 Q. When you say, "one of these,"
8 what do you mean?

9 A. This, Exhibit 1. I gave him
10 this. I gave him an invoice for services that
11 were rendered and weren't paid. And in my
12 file, I didn't have an original engagement
13 letter, so I had him sign another original
14 engagement letter.

15 Q. I am talking about this document
16 right now. What is the date of the signature
17 underneath Mr. Aronson's name?

18 A. Mr. Aronson signed this
19 03/18/02.

20 Q. Is that your signature of
21 Mr. Aronson's signature?

22 A. No.

23 Q. Do you know why it's dated 2002?

24 A. The engagement letter is dated
25 2002. I told you; we sat down, I gave him

□

1 A. Branca 72

2 this. I gave him invoices --

Branca's deposition.txt
MR. GOODRICH: Referring to

"this" as Exhibit 1.

A. I gave him invoices that were due for services rendered. And I gave him the engagement letter, saying, "please sign another engagement letter, sign this and pay this when you get a chance." He had no problem. The company had hit an iceberg, it was going down, and he was just taking whatever money he could take out.

Q. So is it your testimony that this document dated December 16th, 2006, and dated underneath Mr. Aronson's name March 2002, was correct?

A. No. It should have been dated 2006. It should have been dated the date on the top, December 16th, 2006. Mr. Aronson put the wrong date on it when he signed it.

Q. Or is that your signature's date?

A. No, it's not. I have the original. It's pretty easy to prove this.

Q. Is that your signature's date?

□

1 A. Branca 73

2 A. No, it's not.

3 (A.A. Branca & Co. letter,
4 03/09/02, 2 pgs., marked Plaintiff's
5 Exhibit 2 for identification.)

6 MR. GOODRICH: If you are going
7 to ask questions about this exhibit,
Page 62

Branca's deposition.txt

8 before you ask any questions, I want
9 an explanation as to what the black
10 mark on the top is.

11 MR. REIS: You will have to ask
12 your own client since you produced
13 this.

14 MR. GOODRICH: Your explanation
15 could be a very easy "I don't know";
16 okay?

17 MR. REIS: My explanation is
18 that you have to ask your own client
19 because he produced this.

20 MR. GOODRICH: With the black
21 mark on it?

22 MR. REIS: That's correct.

23 Q. Do you recognize that document?

24 A. The document is not complete.

25 Q. Do you recognize that document?

□

1 A. Branca 74

2 A. Yes.

3 Q. Did you produce this to me with
4 the number one circled around it, in response
5 to a document request that I had sent to you
6 through your attorney?

7 A. I don't remember the number one
8 on it but the document is my document.

9 Q. And isn't it true that I had
10 forwarded a document request to your attorney
11 but you responded to it directly, yourself?

Branca's deposition.txt

12 A. Correct.

13 Q. Now, what is this document?

14 A. This is an engagement letter.

15 Q. Is this the engagement letter

16 that you discussed previously, that if you

17 could see it, you would be better able to

18 advise me as to what your function was?

19 A. Yes.

20 Q. Have you had an opportunity to

21 review this?

22 A. Yes.

23 Q. In your services to May

24 Construction, did you fulfill this agreement

25 and did you perform all of these tasks?

1

1 A. Branca 75

2 A. Probably not.

3 Q. Then you were in breach of

4 contract?

5 A. Breach of contract? This is an

6 engagement letter which gives you the extent

7 and the scope of my work. And this is not a

8 complete document. This isn't the document

9 that I sent to you.

10 Q. I'm sorry? This is not a

11 document --

12 A. This is not the document that I

13 sent to you.

14 MR. GOODRICH: I think he's

15 leaving the word "complete" out. This

16 is not the complete document.

Page 64

Branca's deposition.txt

17 Q. Could you look at the first page
18 of Exhibit 2. Do you see that document?

19 A. Yes.

20 Q. Look at the next page. Do you
21 see page two? And do you see your signature on
22 the bottom?

23 A. Yes.

24 Q. And do you see any reference to
25 the word "enclosures"?

□

1 A. Branca 76

2 A. Correct.

3 Q. What is missing?

4 A. Signature page.

5 Q. Whose signature?

6 A. Mr. Aronson's signature.

7 Q. Do you have a copy of that?

8 A. Yes.

9 MR. REIS: Would you produce
10 that to me at another time?

11 THE WITNESS: Yes

12 Q. Looking at page two, do you see
13 the first paragraph that says, "In addition, we
14 will perform the following; we will prepare the
15 required Federal and State tax returns." You
16 see that; right?

17 A. Yes.

18 Q. And, "We will be able to consult
19 or assist you on accounting, tax and
20 contemplated changes in business policies or

21 other matters that you request." Do you see
22 that?

23 A. Yes.

24 Q. "We will prepare certified
25 payroll reports for the various jobs as

□

1 A. Branca 77
2 required"; do you see that?

3 A. Yes.

4 Q. And you did that, didn't you?

5 A. At times.

6 MR. GOODRICH: Again, you have
7 to qualify the word "prepared."
8 Don't leave the impression that
9 "prepared" means "complete." Prepare
10 a report and complete a report. I
11 just want the record to be clear that
12 he made it clear before.

13 MR. REIS: You are arguing your
14 case, Mr. Goodrich.

15 MR. GOODRICH: I'm not arguing
16 my case. Just don't use the wrong
17 words.

18 MR. REIS: Mr. Goodrich, I am
19 reading out of this document that
20 says, "We will prepare certified
21 payroll reports for the various jobs
22 as required."

23 Q. That was what you had
24 contractually agreed to do with May
25 Construction; isn't it, sir?

Branca's deposition.txt

1

1	A. Branca	78
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2 A. If it's on this, yes.

3 Q. And your fees were set forth in
4 this document?

5 A. Correct.

6 Q. And for the years 2005 through
7 2007, you contractually agreed to bill May
8 Construction \$5,000 for the services as set
9 forth in this document?

10 A. Correct.

11 Q. And for the year 2002; \$4,000.
12 For the year 2003; \$4,250. And for the year
13 2004; \$4,500. Correct?

14 A. Correct.

15 Q. Did you bill May Construction in
16 excess of that amount for services rendered by
17 your accounting firm, Mr. Branca?

18 A. No. It does say that if there
19 is special work that is required, it would be
20 billed at an hourly rate.

21 Q. Then I ask you again, did you
22 bill him in excess of --

23 A. You didn't ask that question.

24 Q. It's your testimony that you
25 were responsible for the preparation of May

1

1 A. Branca 79

2 Construction tax returns during the period that

Branca's deposition.txt

3 you served as a certified public accountant;

4 correct?

5 A. Correct.

6 Q. I want to discuss with you a

7 little more about your described profit

8 interest.

9 When May Construction was

10 applying for loans, did you provide Mr. Aronson

11 with the documents that were necessary to show

12 the allocated reserve of your profit that was

13 undisclosed in other documents, as you have

14 testified to me?

15 A. There is no allocated reserve

16 for the undistributed profits. The liability

17 existed between Mr. Aronson and myself, not May

18 Construction. It would be as if I gave you

19 \$10, you put \$10 in your corporation, you owe

20 me the \$10.

21 Q. Then why do you say that you had

22 a profit interest in May Construction when you

23 just testified that your relationship was with

24 Mr. Aronson?

25 A. The money was sitting in

□

1 A. Branca

80

2 May Construction, based on the profit of the

3 jobs that I brought to the table that were

4 successfully completed by May Construction.

5 Q. And your interest was only in

6 those jobs, correct, that you defined

7 previously in this deposition?

Branca's deposition.txt

8 A. Correct.
9 Q. Okay. What is Mr. Aronson's
10 interest in the Bear Hill property; sir?
11 Could you just remind me again?
12 A. He's a 50 percent shareholder.
13 Q. And what is the status of that
14 project?
15 A. It's on hold.
16 (Vendor Questionnaire, 27 pages,
17 marked Plaintiff's Exhibit 3 for
18 identification.)
19 Q. What is this document?
20 A. This is a Vendex form for the
21 City of New York.
22 Q. And did you prepare this
23 document?
24 A. Yes.
25 Q. And you see the number 13 on top

□

1 A. Branca 81
2 on the document?
3 A. Yes.
4 Q. That's your handwriting;
5 isn't it?
6 A. That, I can't tell.
7 Q. Is that your handwriting that
8 says, "docs supporting owner of Landmark
9 Construction."
10 A. Correct.
11 Q. And you provided that to me in

Branca's deposition.txt

12 response to a request that I had made through
13 your attorney?

14 A. Correct.

15 Q. Who was this submitted to?

16 A. The City of New York.

17 Q. And do you recognize the
18 handwriting in this document?

19 A. Yes.

20 Q. Whose handwriting is it?

21 A. It's mine.

22 Q. And in this document that was
23 submitted to the City of New York, who was
24 listed as the owner of Landmark?

25 A. Jan Wawak.

□

1 A. Branca 82

2 Q. And at that time, was Jan Wawak
3 the owner?

4 A. No.

5 Q. Were you listed in here at all
6 as having an ownership interest?

7 A. No.

8 Q. What was the purpose of
9 submitting this document to the City of
10 New York?

11 A. Money was taken out of May
12 Construction, put into the Landmark account
13 that was set up in an attempt to start another
14 construction company when May Construction was
15 going down the toilet. Vendex form is required
16 to submit to the City of New York, New York, so

Branca's deposition.txt

17 that you could bid on jobs. We were trying to
18 acquire bonding so we could get work through
19 New York City to continue business.

20 Q. Is it your testimony that you
21 were actively involved in submitting this
22 document which is not correct --

23 A. I prepared the document.

24 Q. And you knew that the statements
25 contained in this document were not correct?

□

1 A. Branca 83

2 A. The statements contained in the
3 document -- The ownership of Landmark could
4 have been given to Jan at any point in time.

5 Q. Sir, my question to you is
6 different. You knew at the time that you
7 prepared this document that the statements you
8 wrote in this document were not correct?

9 A. If it was successful, the
10 ownership of Landmark would have been given to
11 Jan.

12 Q. Mr. Branca, please answer my
13 question directly. You knew at the time that
14 you prepared this document that the statements
15 contained therein were not correct?

16 A. No, that is not true.

17 Q. They were correct?

18 A. No. It was in the process of
19 being given to Jan. If jobs were obtained, the
20 ownership would have been transferred to Jan.

21 Branca's deposition.txt
21 Q. And that's the answer that you
22 want on the record; correct?

23 A. Correct.

24 Q. Did the City of New York ever
25 contact you regarding this application?

□

1 A. Branca 84

2 A. No.

3 Q. Have you testified under oath
4 before?

5 A. Yes.

6 Q. In what capacity?

7 A. Divorce.

8 Q. Anything else?

9 A. That's it.

10 (Windward Holdings document,
11 06/01/05, 1 pg., marked Plaintiff's
12 Exhibit 4 for identification.)

13 Q. What is this document?

14 A. This is the buy-out of Yuly's
15 share and interest in Windward Holdings Corp.

16 Q. Did you sign Mr. Aronson's
17 signature on this document?

18 A. Negative. No.

19 Q. Is there a reason why it's not
20 notarized?

21 A. None of the documents that we
22 have between each other have been notarized.
23 It's memorialized by the cancelled check. And,
24 again, this is not the complete document that I
25 gave to you. This is one page of the documents

Branca's deposition.txt

□

1 A. Branca 85

2 that were attached to this.

3 MR. REIS: Thank you.

4 Q. Now, getting back to May

5 Construction, did you maintain a general ledger

6 for May Construction?

7 A. Yes.

8 Q. And balance sheets?

9 A. Yes.

10 Q. And your testimony today is that

11 you no longer possess that?

12 A. Correct.

13 MR. REIS: Let me take a

14 ten-minute break. I want to get

15 some documents together for you to

16 review.

17 (Break taken.)

18 Q. Mr. Branca, getting back to

19 Landmark for a moment, what is your

20 recollection of how much time passed between

21 the time that a deposit was made into Prestige

22 and the time that you moved it to the FCM

23 account at Smith Barney?

24 A. Months.

25 Q. And during those months that you

□

1 A. Branca 86

2 believe passed, it's your testimony that May

Branca's deposition.txt

3 Construction was doing poorly and that was the
4 reason for the transfer?

5 A. The reason for the transfer was
6 to set up another entity to do business with
7 New York.

8 Q. Would it surprise you if I told
9 you it was a matter of weeks between the time a
10 deposit was made into Prestige and the time you
11 moved it to FCM, which is the entity that you
12 have sole interest in?

13 A. Hold on. I thought you were
14 talking about moving it from Prestige to Smith
15 Barney.

16 Q. Correct.

17 A. Show me the documents that
18 leaves a foot print.

19 Q. I will. Would it surprise you
20 if I told you that that's what happened; that
21 it was a matter of weeks?

22 A. From the time the Prestige
23 account was set up and the time it was moved
24 over to Smith Barney?

25 Q. Yes.

□

1 A. Branca

87

2 A. That would be surprising.

3 Q. Take a look with me again at
4 Exhibit 3, it's the vendor questionnaire.
5 Do you have that in front of you?

6 A. Yes.

7 Q. What was the gross revenue of
Page 74

Branca's deposition.txt

8 Landmark at the time you prepared this
9 document?

10 A. It was zero.

11 Q. Would you look with me at page
12 two of this document, 1(f), and tell me what
13 you marked off as the gross revenue in the
14 document that was submitted to New York?

15 A. A million, two-two-five.

16 Q. Was that true?

17 A. This was what was projected to
18 be done.

19 Q. Is that what the question asked
20 for, Mr. Branca?

21 A. That's the way I interpreted the
22 question to be asked.

23 Q. So when you see the words,
24 "annual gross revenue," you interpret it in
25 your mind to mean "projected"?

□

1 A. Branca 88

2 A. In this document, yes.

3 Q. Where does it give you the
4 indication that "projected" is what is called
5 for in that question?

6 A. This was a shell corporation.
7 I was trying to get registered with New York.
8 We had an agreement between Yuly, myself and
9 Jan; we were all going to have a third
10 interest, with Jan being the beneficial
11 shareholder to this entity.

12 Branca's deposition.txt
13 MR. REIS: Strike as

14 non-responsive.

15 Q. Where in the document does it
16 show you some indication that this is asking
17 for revenue that potentially would be earned?

18 A. I don't see it.

19 Q. You testified that Mr. Wawak
20 could have received ownership interest of this
21 entity; correct?

22 A. Yes.

23 Q. Look at 6(b). That question
24 reads, "Pursuant to any stock options or any
25 other arrangements, does any individual or
26 entity have the right within the next three

□

1 A. Branca 89
2 years to acquire stock in a submitting vendor,
3 which, when combined with current holdings,
4 would make such an individual or entity a
5 principal owner or officer?"

6 What did you respond to that
7 question?

8 A. No.

9 Q. Was that true at the time?

10 A. Jan Wawak was, in this document,
11 the 100 percent owner. There was nobody else
12 that had the right to get stock, buy stock.

13 Q. But this document, you testified
14 that it was not true; Jan was not the owner.

15 A. I testified that he was the
16 beneficial owner of the stock. At any point in

Branca's deposition.txt

17 time, we could have transferred stock to
18 Mr. Wawak.

19 Q. How was he the beneficial owner?

20 A. The agreement made between
21 Mr. Wawak, Mr. Aronson and myself, was that he
22 was going to be the 100 percent shareholder
23 in Landmark Construction.

24 Q. Where is that agreement?

25 A. Verbal agreement.

□

1 A. Branca 90

2 Q. Verbal agreement. And as a
3 certified public accountant, that's sufficient
4 for you?

5 A. It has nothing to do with
6 certified public accountant. I'm not
7 certifying anything.

8 Q. In your background as a business
9 person, was that sufficient?

10 A. I have a 25-year relationship
11 with Mr. Aronson. It was plenty sufficient
12 for me.

13 Q. Was it sufficient for you to
14 respond "no" in that document?

15 A. In this document right here?

16 Q. Yes.

17 A. The answer to the question is
18 absolutely no.

19 Q. Okay.

20 (Bank of New York copies of

21 Branca's deposition.txt
22 checks and bank statements, 8 pgs.,
23 marked Plaintiff's Exhibit 5 for
 identification.)

24 MR. REIS: Please review that
25 and let me know when you are done

1 A. Branca 91
2 reviewing those documents.

3 Q. Looking at the first page of
4 that document, Mr. Branca, that's a check drawn
5 on the account of May Construction. Do you see
6 that?

7 A. Yes.

8 Q. Made payable to your accounting
9 firm, A.A. Branca and Co., CPA. Do you see
10 that?

11 A. Yes.

12 Q. Whose signature is that on the
13 check?

14 A. Mine.

15 Q. what is the dollar amount for?

16 A. Twenty thousand.

17 Q. what was the purpose of that
18 \$20,000 payment from May Construction to your
19 accounting firm?

20 A. Accounting fees.

21 Q. And that was in the month of
22 March 2005; would you agree?

23 A. Yes.

24 Q. Let's look at the next page.

25 That is a check also made
Page 78

Branca's deposition.txt

1

1 A. Branca 92

2 payable to A.A. Branca and Co.?

3 A. Yes.

4 Q. Drawn on the account of May

5 Construction?

6 A. Correct.

7 Q. Whose signature?

8 A. Mine.

9 Q. The amount of \$15,000?

10 A. Both of these checks look like

11 they were co-signed by Yuly. Yes, it is

12 fifteen thousand.

13 Q. What is the date of that check?

14 A. I can't read the date but it's

15 in the month of April; 04/26.

16 Q. And what was that for?

17 A. Accounting fees.

18 Q. So \$35,000 was paid to your firm

19 in a two-month period in 2005; correct?

20 A. Correct.

21 Q. Do you have copies of the May

22 Construction checks made prior to the year

23 2005?

24 A. You gave them to us. No, you

25 didn't. You didn't give us 2005, you didn't

1

1	A. Branca	93
2	give us 2006.	

3 Q. My question is, do you have

3 Q. My question is, do you have
4 copies of the checks --

5 A. No, I don't.

6 Q. Looking at the next page; do you
7 recognize that?

8 A. Yes.

9 Q. And there are two checks on that
10 page? One for \$4,000 and one for \$21,000 made
11 payable to Smith Barney?

12 A. Correct.

13 Q. And the date on the check is
14 01/10? would you agree with me?

15 A. Yes.

16 Q. And whose signature appears
17 on it?

18 A. Yuly's.

19 Q. Is that your forgery of
20 Mr. Aronson's signature?

21 A. It's not a forgery. I was
22 authorized to sign checks for Mr. Aronson.

23 Q. Is that your signature then of
24 Mr. Aronson's signature?

25 A. I believe so, yes.

1

1 A. Branca 94

2 Q. why would you, Mr. Branca, sign
3 Mr. Aronson's signature if you were a signatory
4 to the account?

5 A. In 2005, they changed the
6 accounting rules. I couldn't sign checks, I
7 couldn't do bookkeeping services if I was going

Branca's deposition.txt

8 to issue financial statements. So the checks
9 had to be signed by Mr. Aronson. In his
10 absence, I signed his signature.

11 Q. Do you have that in writing?

12 A. No. Mr. Aronson reviewed every
13 bank statement, every month, in detail. And
14 there wasn't any question back in 2006.

15 Q. Were you signing at that time in
16 the capacity as a profit owner of May
17 Construction or as a certified accountant or as
18 his buddy?

19 A. Neither. I was performing a
20 function for May Construction.

21 Q. In the capacity of the certified
22 accountant which you held?

23 A. No. The functions that were
24 being performed were bookkeeping functions, not
25 certified public accountant functions.

□

1 A. Branca 95

2 Q. Through your accounting firm.

3 A. And in conjunction with the
4 accounting firm.

5 Q. But through your accounting
6 firm. Did you bill as part of the \$5,000 per
7 month to May Construction, the signing of
8 checks as part of the function of the
9 accounting firm or was it something separate?

10 A. No, it was never billed.

11 Q. And did a document exist or a

Branca's deposition.txt
12 document did not exist giving you the power to
13 sign Mr. Aronson's signature?

14 A. A document did not exist.
15 It was common practice.

16 Q. Common practice in the
17 profession?

18 A. In May Construction.

19 Q. That someone would sign it or
20 that you would sign it?

21 A. That I would sign his name.

22 Q. Okay. Good.

23 That check was made payable to
24 Smith Barney. Why?

25 A. At the beginning of the year, we

□

1 A. Branca 96
2 would fund retirement accounts. Yuly, his wife
3 and me.

4 Q. In equal proportions?

5 A. To the maximum amount that the
6 retirement accounts could be contributed to.

7 Q. Was that deducted from your
8 interest percentage?

9 A. Yes.

10 Q. Your interest was 50 percent of
11 the projects that you brought to May
12 Construction; correct?

13 A. The profits in the projects;
14 yes. The profit only.

15 Q. I would like for you, with as
16 much detail as possible, to tell me the full

Branca's deposition.txt

17 name of the projects that you brought to the
18 firm.

19 A. I gave them to you.

20 Q. I would like you to do it again,
21 please.

22 A. I did it already. Just read it
23 back.

24 Q. You're not doing it again?

25 A. I'm not doing it again.

□

1 A. Branca 97

2 MR. REIS: Let the record
3 reflect that Mr. Branca is not
4 answering my question.

5 MR. GOODRICH: Let the record
6 reflect that he did answer it once.
7 He wrote it down, I wrote it down.
8 We could be here all day if you want
9 to ask the same question a thousand
10 times.

11 Q. Mr. Branca, the projects that
12 you referred to earlier, were those the only
13 projects that you brought to May Construction?

14 A. I would have to go back and
15 recreate.

16 MR. REIS: I would like you to
17 do that. Could you please take the
18 time and make sure that I get that by
19 Monday for the TRO hearing
20 before Judge Karas?

Branca's deposition.txt

21 MR. GOODRICH: No, we will not.

22 You are asking him to do something

23 now. If he needs more time, he will

24 do it. We will take it under

25 advisement. Mr. Aronson has all the

□

1	A. Branca	98
2	records.	

3 Q. You have no independent
4 knowledge of the projects that you brought to
5 May Construction? Is it your testimony that
6 Mr. Aronson's records only reflect what you
7 brought in?

8 A. All the records reflecting the
9 jobs that I brought in to May Construction
10 would be contained in the records, in the files
11 that Mr. Aronson has, along with the sheets.

12 Q. I'm asking you for the names of
13 the projects. Do you have an independent
14 recollection, other than the ones you said
15 previously, of those projects? Do you have an
16 independent recollection of those?

17 A. I gave you three names off the
18 top of my head when you hit me blind-side with
19 this stuff. I think that's pretty good.

20 Q. I don't know if that's pretty
21 good or not, but, be that as it may, were the
22 checks to Smith Barney deposited in your
23 account at Smith Barney?

24 A. Yes.

25 Q. why weren't those checks made

Branca's deposition.txt

□

1 A. Branca 99

2 payable to you as an individual to be deposited
3 to a Smith Barney account?

4 A. I don't know. At the time, it
5 was easier to just cut the checks to Smith
6 Barney.

7 Q. Easier than just typing in
8 "Anthony Branca"?

9 A. Then I would have had to deposit
10 the money, wait for it to clear and send the
11 check to Smith Barney.

12 Q. You could have deposited it
13 right into the Smith Barney account; couldn't
14 you?

15 A. Not into the retirement account.
16 That check would have to be made out to Smith
17 Barney.

18 Q. What year is this? 2006? Okay.
19 Next page, please. This is a check made
20 payable to A.A. Branca & Co.; correct?

21 A. Correct.

22 Q. Is that your signature?

23 A. Yes.

24 Q. Made payable -- March 22nd,
25 2005?

□

1 A. Branca 100

2 A. It's the same check as the first

Branca's deposition.txt

3 page.

4 Q. You are right. I apologize.

5 I have a duplication, I apologize. As is the

6 next one.

7 Look with me at the page with

8 check number 10854. Do you see that?

9 A. Yes.

10 Q. Made payable to A.A. Branca and

11 Co.?

12 A. Yes.

13 Q. Whose signature is that?

14 A. It appears to be my signature of

15 Yuly's signature.

16 Q. Payable in the amount of

17 \$10,000?

18 A. Correct.

19 Q. September 2006?

20 A. Correct.

21 Q. What was that check for?

22 A. Accounting fees.

23 Q. And the next page, check made

24 payable to A.A. Branca, October 2006, for

25 \$10,000?

□

1 A. Branca 101

2 A. Correct.

3 Q. Is that your signature or

4 Mr. Aronson's signature?

5 A. It appears to be my signature.

6 Q. And the next one?

7 A. The same.

Branca's deposition.txt

8 Q. Made payable to A.A. Branca,
9 dated December 6th, 2006, for \$10,000; correct?

10 A. Correct.

11 (Smith Barney Business FMA
12 statement, Smith Barney Business FMA
13 statement, and CitiGroup Smith Barney
14 statement marked Plaintiff's Exhibits
15 6, 7 and 8 for identification.)

16 Q. Mr. Branca, looking at
17 Exhibit 6, take a look at the second to the
18 last page. Do you recognize that document?

19 A. No.

20 Q. The name of that document is
21 called an account transfer authorization; do
22 you see that?

23 A. Yes.

24 Q. Is that your signature on the
25 bottom of the page?

□

1 A. Branca 102

2 A. No. Yes.

3 Q. What's the date next to your
4 name?

5 A. 12/21/06.

6 Q. Do you know what the purpose of
7 that document is?

8 A. This is to transfer money from
9 one brokerage account to another.

10 Q. And in that document up on top,
11 do you see the account title?

12 A. Branca's deposition.txt
 "Landmark Construction of

13 New York, Inc."

14 Q. Underneath it, can you read what
15 is handwritten?

16 A. "FSA ADP Clearing" and
17 something-services.

18 Q. Out-sourcing services?

19 A. Okay.

20 Q. Now, looking at the first page
21 of Exhibit 6, what is the name of the account
22 at Smith Barney?

23 A. "Landmark Construction of
24 New York."

25 Q. What is the address of this

□

1 A. Branca 103
2 account?

3 A. 700 Summer Street.

4 Q. What is the name of the person
5 whose attention the account should be
6 brought to?

7 A. My name.

8 Q. Isn't it true this is the
9 account that you established with Smith Barney
10 in the name of Landmark?

11 A. Correct.

12 Q. Isn't it also true that that
13 account transfer document was the document that
14 initiated the transfer of money from Prestige
15 into the account that you established at
16 CitiBank?

Branca's deposition.txt

17 A. Yes. Well, I established both
18 accounts.

19 Q. Please answer my question.

20 A. I established the account at
21 Prestige, also.

22 Q. Please answer my question.

23 A. I transferred it from one
24 account to another.

25 Q. Please answer my question.

□

1 A. Branca 104

2 Mr. Branca, the transfer document was the one
3 that was responsible for the transfer of funds
4 from Prestige to this account at CitiBank?

5 A. Correct.

6 Q. Looking at the first page of
7 Exhibit 6, do you see on the bottom that about
8 \$152,000 came in. Do you see that?

9 A. Yes.

10 Q. Do you see that \$152,900 and
11 \$100,000 was sent out?

12 A. No. Where?

13 Q. Looking at the bottom of the
14 page. Do you see where it says "redemption"
15 and a minus sign?

16 A. Yes.

17 Q. What does a "minus" sign mean to
18 you in this document?

19 A. It's taken out.

20 Q. Taken out. Do you see

Branca's deposition.txt

21 \$100,000 --

22 A. Yes.

23 Q. With a minus sign next to it?

24 A. Yes.

25 Q. What does that mean to you?

□

1 A. Branca 105

2 A. It was taken out.

3 Q. Looking underneath it, do you

4 see "from 578-22807"?

5 A. Yes.

6 Q. And that's the number of this

7 account; right? Upper right-hand corner?

8 A. Right.

9 Q. And it says, "to 578-21674."

10 You see that?

11 A. Okay.

12 Q. And the date for the \$152,000

13 transfer was 01/11/07 and the date of the

14 journal of \$100,062 was 01/12/07?

15 A. Okay.

16 Q. Now, look with me at

17 Exhibit 7. Do you have that in front of you?

18 Looking at the first page. What

19 is the caption of that account?

20 A. The FCM Grouping.

21 Q. And that's your company; isn't

22 it?

23 A. Correct.

24 Q. Look at the statement, if you

25 would, dated January 1 through January 31,

Branca's deposition.txt

□

1 A. Branca 106

2 2007. It's right on top, page six of eight in
3 the upper right-hand corner. The upper
4 right-hand corner is the page number.

5 A. All right.

6 Q. On the bottom, do you see the
7 receipt under the caption "deposits" of
8 \$152,900?

9 A. Yes.

10 Q. On 01/16/07?

11 A. Yes.

12 Q. And do you see the journal
13 underneath that of \$100,062 on 01/12?

14 A. Yes.

15 Q. You would agree with me, would
16 you not, that those monies came from the
17 Landmark account that you had created?

18 A. Correct.

19 Q. That had been taken from the
20 Prestige account?

21 A. Correct.

22 Q. Let's look at Exhibit 8.
23 Do you have that in front of you?

24 A. Yes.

25 Q. What is the name of that

□

1 A. Branca 107

2 account?

Branca's deposition.txt

3 A. Branca Family Holdings, LLC.

4 Q. If you look at the fourth page,
5 what is the date that you opened that account?

6 A. 03/09/07.

7 Q. Do you have a recollection as to
8 what happened with that FMC account?

9 A. It probably got transferred into
10 here.

11 Q. It all got transferred into
12 here, didn't it?

13 A. It was all my money. I can
14 transfer it anywhere I want.

15 Q. Was that \$252,000 all your
16 money?

17 A. Once it was on the sheet, it was
18 all my money.

19 Q. Do you have the sheet that shows
20 it was all your money?

21 A. I can reconstruct the sheets.

22 Q. Do you have the sheet that shows
23 it was all your money?

24 A. No, Mr. Aronson has all the
25 sheets.

1

1	A. Branca	108
---	-----------	-----

2 Q. Is your answer that you do not
3 have the sheets as a certified public
4 accountant --

5 A. It has nothing to do with being
6 a certified public accountant.

7 Q. Do you have the sheets,
Page 92

Branca's deposition.txt

8 Mr. Branca?

9 A. No, I don't.

10 Q. Okay. And you would agree that
11 all the monies from FMC went into this account?

12 A. Correct.

13 MR. REIS: Okay. I am done with
14 those. Thank you.

15 MR. GOODRICH: Did you make
16 duplicate copies of these exhibits for
17 us?

18 MR. REIS: They were produced to
19 you.

20 MR. GOODRICH: But you have
21 created exhibits of them now, so I
22 don't know which are --

23 MR. REIS: I have duplicate
24 copies.

25 MR. GOODRICH: For me so can

□

1 A. Branca 109

2 I can have copies of the exhibits?

3 MR. REIS: Yes.

4 Q. I want to get a status on the
5 Bear Hill property and the Middle Paten Road.

6 Is Bear Hill generating any
7 revenue?

8 A. No.

9 Q. What is the status of that
10 property?

11 A. It is in the process of being

Branca's deposition.txt

12 subdivided.

13 Q. Have you taken action since the
14 issuance of the TRO to subdivide that property?

15 A. I have continued the process of
16 subdividing the property. The property was
17 being subdivided, the applications were in.
18 It's a question of when they come up in the
19 hearings.

20 Q. Have you authorized attorneys to
21 proceed further in the subdivision of that
22 property since the date of the TRO?

23 A. No.

24 Q. Have attorneys acted on your
25 behalf?

□

1 A. Branca 110

2 A. No.

3 Q. Have you directed them not to
4 proceed, given the order of the Court in this
5 matter?

6 A. The attorneys?

7 Q. Have you directed them not to
8 proceed doing anything further on that property
9 since the issuance of the TRO in this matter?

10 A. No.

11 Q. Is there a reason why you have
12 not?

13 A. Nobody's working, they are not
14 getting paid. There is no need to.

15 Q. Are attorneys working on the
16 subdivision of that property?

Branca's deposition.txt

17 A. No.

18 Q. Is anything being done with
19 regard to that property?

20 A. No.

21 Q. I thought your answer to my
22 question was that people were working on it,
23 that things were happening. Is it now your
24 testimony that nothing was being done to that
25 property?

□

1 A. Branca 111

2 A. whatever applications were in
3 place, prior to the TRO, were being followed
4 through the process.

5 Q. Have you directed the person or
6 entity responsible for that process to stop the
7 process?

8 A. No.

9 Q. Is there a reason why you have
10 not?

11 A. Again, nobody is working because
12 they are not getting paid.

13 Q. And that's for Bear Hill; right?

14 A. That is for Bear Hill.

15 Q. You know, you are aware of the
16 Judge's order in this matter?

17 A. Correct. You cannot sell,
18 transfer, encumber, further encumber the
19 property; yes.

20 Q. Is that your understanding of

Branca's deposition.txt
21 what the order was?

22 A. Yes.

23 Q. What about Middle Paten Road?

24 what's the status of that?

25 A. It is in the final stages of

□

1 A. Branca 112

2 approval.

3 Q. Again, similar question; did you
4 direct persons or entities working on that
5 project to cease working on that project?

6 A. Negative.

7 Q. When you say "negative," what do
8 you mean?

9 A. No.

10 Q. What has transpired since the
11 date of the TRO?

12 A. We obtained wetland approval,
13 right around December of 2007.

14 Q. When you say "we," who acted on
15 behalf of the entity?

16 A. An engineering firm, a wetland
17 consultant and an attorney.

18 Q. What was your understanding of
19 the TRO?

20 A. Do not sell, transfer, or
21 encumber properties.

22 Q. You mentioned that you could
23 recreate the sheets; didn't you?

24 A. Yes.

25 Q. What documents do you have that

Branca's deposition.txt

□

1 A. Branca 113
2 would allow you to recreate the sheets?
3 A. I have the whole box of checks
4 that you gave me. And if I had the checks for
5 2005 and 2006, it would be a relatively simple
6 task.
7 Q. Do you have the invoices?
8 A. Don't need the invoices.
9 Q. For the vendors?
10 A. Mr. Aronson has those, along
11 with the sheets.
12 Q. Answer my question. Do you have
13 the invoices of the vendors?
14 A. No.
15 Q. The sheets contain information
16 relating to various projects that you and
17 Mr. Aronson were working on; correct?
18 A. There were two projects that we
19 were working on.
20 Q. The sheets only deal with the
21 two projects?
22 A. The sheets relating to money
23 that he spent and money that I spent. That we
24 have to -- That he owes me or I owe him.
25 Q. With regard to only two

□

1 A. Branca 114
2 projects?

Branca's deposition.txt
3 A. At this point in time there are
4 two projects.

5 Q. At this time point in time.
6 I was talking about the past.

7 A. Going back twenty years?
8 we have had a sheet for twenty years, yes.
9 Every project that we did was put on that
10 sheet.

11 Q. You are not answering my
12 question, Mr. Branca. The sheet that you refer
13 to being able to recreate, what time period are
14 you referring to?

15 A. From 2006 to present.

16 Q. What information is contained on
17 those sheets?

18 A. Money transferred back and
19 forth.

20 Q. You received copies of the
21 checks that we subpoenaed; correct?

22 A. Checks that you subpoenaed?
23 I received copies of checks from 2001 through
24 2004. I believe you subpoenaed up to 2007.
25 You forgot to send us 2005, '06 and '07.

□

1 A. Branca 115

2 Q. You received copies of checks
3 that we subpoenaed; didn't you?

4 A. 2001 through 2004.

5 Q. What information would you need
6 that you have accessible to complete your
7 spread sheet? You would have your own

Branca's deposition.txt

8 documents, wouldn't you? What you paid?

9 A. I have all of the expenses that
10 were paid out of Windward Holdings; correct.

11 Q. Did you put any money into May
12 Construction?

13 A. Back in 1983 or '84, when May
14 Construction was May Industries Corp.; yes,
15 I did.

16 Q. So if you had all the checks
17 from May Construction, it's your testimony that
18 you could recreate everything?

19 A. Give or take. I could come
20 close. We are talking about a lot of money
21 here.

22 Q. How would you know about the
23 projects that you referred to May Construction,
24 how would you know the profit and loss on that?

25 A. I would have to go through the

□

1 A. Branca 116
2 files.

3 Q. Do you have those files?

4 A. I don't have them with me.

5 Q. But you have those files?

6 A. I may have access to those
7 files.

8 Q. Very good. What files do you
9 have, for which of those entities?

10 A. I don't have the job files
11 themselves. I've got job knowledge and

Branca's deposition.txt

12 somewhere around there are job cost reports
13 that are floating around. Mr. Aronson has.
14 And somewhere on a back-up on a diskette in my
15 office there may be accounting files someplace.
16 Q. Okay. That's what you would
17 recreate it with, the documents you may or may
18 not have?
19 A. That's right. And your
20 cancelled checks.
21 Q. whose checks?
22 A. The Bank of New York cancelled
23 checks.
24 Q. Not mine?
25 A. The ones that you subpoenaed.
□

1 A. Branca 117
2 Q. Are they mine, Mr. Branca?
3 A. They're in your possession.
4 Q. Are they May Construction's or
5 mine?
6 A. They are May Construction's.
7 Q. Thank you, Mr. Branca.
8 Did your accounting firm
9 generate financial statements for May
10 Construction?
11 A. Yes.
12 Q. Do you have copies of those?
13 A. No.
14 Q. Do you have copies of the
15 invoices relating to services performed for May
16 Construction?

Branca's deposition.txt

17 A. Yes.
18 Q. And where are those?
19 A. Provided to you.
20 Q. What you provided is all that
21 you have?
22 A. That's it.
23 Q. How did you keep track of the
24 profits relating to the jobs you referred to
25 May Construction?

□

1 A. Branca 118
2 A. Job costs.
3 Q. Tell me how you did that.
4 A. The money that came in from the
5 jobs get posted against the job. The money
6 that went out would get allocated to the job
7 and the profit was the difference, the delta.
8 Q. And again, you do or do not have
9 copies of those job costs?
10 A. I do not have them but I'm going
11 to make it a point to look for them. Because I
12 have to recreate the sheet and that will put
13 this whole thing to bed.
14 Q. And when you recreate the sheet,
15 whether or not that's admissible, you are going
16 to have all the source documents?
17 A. Yes.
18 Q. Did you prepare financial
19 statements that were submitted to a
20 construction bonding company?

Branca's deposition.txt

21 A. Yes.

22 Q. Were they true and accurate?

23 A. Yes.

24 Q. Were they certified?

25 A. No.

1 A. Branca 119

2 Q. Did they need to be?

3 A. No.

4 Q. What was the arrangement between

5 you and Mr. Aronson with regard to the purchase

6 of Bear Hill?

7 A. What do you mean?

8 Q. What was the arrangement?

9 A. We are 50/50 partners.

10 Q. What monies were used to

11 purchase that?

12 A. Joint money in May Construction.

13 Q. A check was drafted from or

14 drawn from May Construction?

15 A. Yes.

16 Q. Is there a reason why you didn't

17 draft a check from your own account?

18 A. And Yuly draft a check from his

19 account?

20 Q. Is there a reason why you didn't

21 draft it from your account?

22 A. We were using joint funds.

23 Q. From May Construction?

24 A. Yes.

25 Q. Is that proper, do you believe,

Page 102

Branca's deposition.txt

□

1 A. Branca 120

2 as an accounting practice, to comingle funds of

3 a person who is not an owner of May

4 Construction within the account of May

5 Construction? Is that a practice that you

6 believe is proper?

7 A. I don't have an opinion on that.

8 Q. You don't? Okay. Is it

9 something you have done with other clients of

10 yours where you have taken money that you were

11 entitled to and maintained it in that account?

12 A. I probably have. I can't give

13 you the specifics.

14 Q. Tell me what account your monies

15 were held in? Was it the May Construction

16 account?

17 A. Yes.

18 Q. And was that money reported to

19 banks and vendors as property of May

20 Construction; to the best of your knowledge?

21 A. Yes.

22 Q. And was your amount due to you,

23 deducted from that?

24 A. Asked and answered.

25 Q. Would you answer it again for

□

1 A. Branca 121

2 me?

Branca's deposition.txt
3 A. The monies due to me were owed

4 by Yuly Aronson. I give you \$10, you
5 deposit \$10 into May Construction's account,
6 you owe me the money, not May Construction.

7 Q. You're not answering my
8 question.

9 The monies that were owed to you
10 by Mr. Aronson, were they being held in May
11 Construction?

12 A. Yes.

13 Q. Did you reflect that in any of
14 the applications that were submitted to the
15 banks or the bonding companies?

16 A. I didn't fill out the
17 applications.

18 Q. Do you know if Mr. Aronson
19 reflected that?

20 A. I have no idea.

21 Q. And how was the decision made as
22 to when you would receive the money that was
23 held in the May Construction checking account
24 that belonged to you?

25 A. It would be based on cash flow.

□

1 A. Branca 122

2 It was a joint decision, based on when money
3 was needed.

4 Q. Exhibit 4, Mr. Branca, is the
5 document entitled, "Windward Holdings Amendment
6 to Shareholders Agreement." Do you recall that
7 agreement?

Branca's deposition.txt

8 A. Yes.
9 Q. And you testified that that was
10 not your signature of Yuly Aronson?
11 A. Correct.
12 Q. It's dated June 2005.
13 A. Correct.
14 Q. Now, the tax returns that you
15 were ordered to produce show in 2005 that
16 windward Holdings paid interest and ordinary
17 dividends to you, and it says your wife but I
18 imagine it was you, as the owner of windward,
19 of \$23,099.
20 A. Okay.
21 Q. Can you tell me what constituted
22 that amount?
23 A. There were two private mortgages
24 that were issued through windward and that was
25 the interest that was earned from issuing those
□

1 A. Branca 123
2 mortgages.
3 Q. And were those paid monthly,
4 those mortgages?
5 A. Yes.
6 Q. Did Mr. Aronson receive any
7 benefit from that interest?
8 A. He received it on the sheet.
9 Q. Did windward Holdings issue a
10 K-1 to Mr. Aronson?
11 A. Mr. Aronson never received a

Branca's deposition.txt
12 K-1 from windward Holdings. He was never an
13 official owner of windward Holdings. He was a
14 silent partner.

15 Q. You have a document that we
16 introduced as Exhibit 4, which is the Amendment
17 to the Shareholders Agreement.

18 A. Where is the Shareholders
19 Agreement?

20 Q. Where is the Shareholders
21 Agreement, Mr. Branca?

22 A. Don't have it.

23 Q. Is that a document that you
24 would have kept?

25 A. Yes, I would have kept that.

□

1 A. Branca 124

2 Q. You don't have it?

3 A. Don't have it.

4 Q. Where was windward Holdings
5 incorporated?

6 A. Delaware.

7 Q. Okay.

8 A. Mr. Aronson never received a K-1
9 from windward Holdings, to the best of my
10 knowledge.

11 Q. Is windward Holdings still an
12 ongoing entity? It is; isn't it?

13 A. Yes.

14 Q. Where are the books and records,
15 the corporate minutes? Where is all that?

16 A. It's in my office.
Page 106

Branca's deposition.txt

17 Q. Did you produce that to me?

18 A. Whatever minutes were there from
19 windward Holdings were produced. Whatever
20 books and records were there, tax returns, were
21 produced.

22 Q. You have corporate minutes?

23 A. Whatever minutes were done for
24 windward Holdings were produced to you.

25 Q. Okay. Do you know that you

□

1 A. Branca 125

2 produced a single piece of paper with regard to
3 corporate minutes for windward Holdings?

4 A. Okay. I am not aware of that
5 but if you say so.

6 Q. Your 2005 tax return as
7 submitted has an entry that relates to passive
8 loss and you did not redact that. And on that
9 document it says, "limited loss, not
10 deductible."

11 what does that amount have to do
12 with and what does the notation have to do
13 with?

14 A. I need to see it.

15 MR. REIS: I am going to show it
16 to you. I didn't make a copy but I
17 will when we admit it.

18 A. I have no idea.

19 Q. Mr. Branca, is it surprising to
20 you that so many documents that are required in

21 this case are missing? Branca's deposition.txt

22 A. It's amazing.

23 Q. Documents that only you would
24 possess, like the windward Holdings --

25 A. No, sir. windward Holding

□

1 A. Branca 126

2 documents were produced to you.

3 May Construction documents that should have
4 been saved, that had e-mails disputing entries
5 on sheets going back to September, 2006, I'm
6 amazed that your client didn't keep those.

7 Q. Are you amazed that you didn't
8 keep those, Mr. Branca?

9 A. We had agreed to the number.
10 When we agreed to the number, that chapter was
11 closed, that paper was filed. He had access to
12 the papers and I moved forward. He's bringing
13 up 2006 stuff in 2007. He had the records
14 because he was able to go back to them and
15 reference them back then. Now a smart guy like
16 that who knows he's going to bring a lawsuit,
17 why wouldn't he have safeguarded those
18 records?

19 Q. Do you have copies of those
20 e-mails?

21 A. Yes, I do.

22 Q. Did you produce them to me?

23 A. Yes, I did.

24 Q. Everything that you had was
25 produced?

Branca's deposition.txt

□

1 A. Branca 127

2 A. Yes.

3 Q. But do you realize how few
4 documents were produced?

5 A. I produced the e-mails that were
6 there.

7 Q. But do you realize how few there
8 were?

9 A. I think the ones I produced to
10 you were right to the point. It doesn't matter
11 the quantity.

12 Q. Are there other documents you
13 possess, Mr. Branca?

14 A. All the documents that I possess
15 were submitted to you.

16 Q. Okay. Your 2004 tax return
17 reflected passive loss of \$20,705 which you did
18 not redact. Would you take a look at that and
19 see if that refreshes your recollection as to
20 whether or not that relates to Windward or Bear
21 Hill or Landmark?

22 A. It's easy. The letters on the
23 side with the name relate to the letters on the
24 next page, the next line down. So the \$20,000
25 passive loss allowed, "DD," it's Windward

□

1 A. Branca 128

2 Holdings.

Branca's deposition.txt
3 Q. Did Mr. Aronson also benefit
4 from that or is it your position because he was
5 not listed as a shareholder, he would not
6 benefit from that?

7 A. He would not have benefited from
8 that.

9 Q. Why was Mr. Aronson a silent
10 partner, as you said, in windward? What was
11 the reason for that?

12 A. It's a question to ask
13 Mr. Aronson.

14 Q. You were part of the entity and
15 you are the shareholder?

16 A. He's your client.

17 Q. Mr. Branca, could you please
18 answer my question because you will on Monday.

19 A. Mr. Aronson was a silent partner
20 because he couldn't own a real estate company
21 and his construction company. The bonding
22 company would not allow it. So, in order for
23 him to have access to this, he had to be a
24 silent partner.

25 Q. And what was the reason for you,
□

1 A. Branca 129
2 if any, not being a partner in May
3 Construction?

4 A. I wasn't a partner in May
5 Construction.

6 Q. You just had a profit interest
7 in those projects that you brought in?

Branca's deposition.txt

8 A. Correct.

9 Q. And you don't have that document
10 that would show the percentage that was agreed
11 upon?

12 A. No.

13 Q. And you don't have the document
14 that shows that Jan Wawak was entitled to
15 receive, possibly, a percentage of Landmark.
16 You don't have that document, either?

17 A. No.

18 (12:30 recess, proceedings resumed
19 1:00 p.m.)

20 Q. Mr. Branca, who owns the
21 property at 38 Seneca Walk in Ocean Bay Park?

22 A. It sold.

23 Q. Who owned that property?

24 A. Windward Holdings.

25 Q. Did Mr. Aronson, individually,

□

1 A. Branca 130

2 contribute any funds towards the acquisition of
3 that property?

4 A. No.

5 Q. Did he, individually, contribute
6 any funds towards the renovation of that
7 property?

8 A. No.

9 Q. Did his company, May
10 Construction, contribute any money towards the
11 acquisition of that property?

Branca's deposition.txt
12 A. I'm not sure. That property was
13 acquired back in the '80's, so it was a long
14 time ago.

15 Q. And did his company, May
16 Construction, contribute any money towards the
17 renovation of that property?

18 A. The answer is going to be no
19 because May Construction wasn't in existence
20 when the property was bought.

21 So the answer to, "Did May
22 Construction contribute any money to the
23 acquisition of Seneca walk"; the answer is no.

24 Q. When was the property sold?

25 A. The property was sold in April.

□

1 A. Branca 131

2 Q. Of what year?

3 A. This year.

4 Q. Did Mr. Aronson receive any
5 credit on the sheets with regard to that
6 property?

7 A. He doesn't own it.

8 Q. Just answer the question.

9 A. No.

10 Q. Did May Construction receive any
11 credit for that?

12 A. No.

13 Q. Did you prepare the personal tax
14 returns for Yuly Aronson?

15 A. Yes.

16 Q. During what periods?
Page 112

Branca's deposition.txt

17 A. During the period '92 to
18 present, 2006.

19 Q. Mr. Branca, in preparing those
20 tax returns, did you take into account the debt
21 that he owed you as you have testified in this
22 deposition?

23 A. In what way?

24 Q. Did you take it into account in
25 preparing his tax return?

□

1 A. Branca 132

2 A. what would be taxable?

3 Q. Did you take it into account --

4 A. Tell me what would be taxable.

5 Q. I am directing you to answer the
6 question. Are you not answering the question?

7 A. To the extent it had impact on
8 taxable income, yes.

9 Q. Very well. Did you prepare any
10 financial statements for Mr. Aronson?

11 A. Yes.

12 Q. Did you take into account the
13 debt that you testified he owed you in
14 preparation of those financial statements?

15 A. The financial statements that
16 were a compilation; it's just the information
17 that was given to me by Mr. Aronson.

18 Q. But you possess a lot of that
19 information yourself; isn't that true?

20 A. Not true.

Branca's deposition.txt
21 Q. Did you know the assets, what
22 his interests were in May Construction when
23 preparing those financial statements?

24 A. Did I know what his interests
25 were?

□

1 A. Branca 133

2 Q. Yes. Did you know the value of
3 May Construction at the time that those
4 financial statements were being prepared?

5 A. No.

6 Q. You did not. What information
7 did you take into consideration when preparing
8 the financial statements for Mr. Aronson?

9 A. The information that was
10 provided to me by Mr. Aronson.

11 Q. What was that?

12 A. Whatever was required to prepare
13 that financial statement.

14 Q. What information is required,
15 Mr. Branca?

16 A. Retirement account, balances,
17 assets that are owned, value of the assets that
18 are owned.

19 Q. Did you take into consideration
20 his interest in Bear Hill?

21 A. I am not sure.

22 Q. Did you take into account his
23 interest in properties held in the name of
24 windward Holdings?

25 A. I'm not sure.

Branca's deposition.txt

□

1 A. Branca 134

2 Q. Did you look at the sheets at
3 the time that you prepared those financial
4 statements that you had prepared?

5 A. No.

6 Q. Do you have any recollection of
7 what information Mr. Aronson provided to you?

8 A. I would give him the format and
9 he would fill in the numbers. The personal
10 financial statement is his claim of what things
11 were worth.

12 Q. I understand what it is.
13 I'm just asking you do know what information he
14 gave you. And your testimony is he filled out
15 a form?

16 A. Correct.

17 Q. Did you provide any of the
18 information to him to fill out that form?

19 A. I don't believe so.

20 Q. You have an obligation to retain
21 tax returns as an accountant; correct?

22 A. Correct.

23 Q. For how many years?

24 A. I believe it is five years.

25 Q. Do you have Mr. Aronson's

□

1 A. Branca 135

2 personal tax returns?

Branca's deposition.txt

3 A. Yes.

4 Q. Do you have the returns for

5 May Construction?

6 A. Yes.

7 Q. Is there a reason why you didn't

8 produce them to me?

9 A. I did produce them.

10 Q. No, you didn't.

11 A. You guys have them. You

12 produced them to me.

13 Q. Is there a reason why you did

14 not produce those returns to me.

15 MR. GOODRICH: Which returns?

16 You asked about two sets of returns.

17 MR. REIS: Both the individual

18 and May Construction.

19 A. The individual returns were not

20 produced to Mr. Aronson because he owes me

21 accounting fees. And if he wants his tax

22 return he can go to the IRS and request it and

23 pay the \$25. As far as May Construction goes,

24 to the best of my belief, we turned over the

25 tax returns that we had. Mr. Aronson is trying

□

1 A. Branca 136

2 to get around paying his accounting bill and I

3 am not going to let him do it.

4 Q. Your testimony is that you did

5 not provide me with the tax returns for

6 Mr. Aronson, individually; correct?

7 A. Correct.

Branca's deposition.txt

8 Q. And you did not provide me with
9 tax returns for May Construction?

10 A. I did provide you with May
11 Construction.

12 Q. What years did you provide me
13 with, that you believe?

14 A. 2006, 2005, 2004.

15 Q. A.A. Branca and Co. received
16 payments from May Construction; correct?

17 A. Correct.

18 Q. Did A.A. Branca and Co. receive
19 a 1099 for that?

20 A. Yes.

21 Q. For what years?

22 A. I don't remember.

23 Q. Did you prepare a 1099?

24 A. Yes.

25 Q. Do you have copy of that 1099?

□

1 A. Branca 137

2 A. No.

3 Q. The payments that you received
4 from Mr. Aronson or from May Construction, did
5 you receive a w-2?

6 A. No.

7 Q. 1099?

8 A. No.

9 Q. K-1?

10 A. No.

11 Q. Is there any document other than

Branca's deposition.txt

12 the checks that you prepared for May
13 Construction as its independent accountant to
14 evidence how much payment --

15 A. Repeat the question.

16 Q. Was there any document that you
17 prepared as the accountant for May Construction
18 to evidence the monies that were received by
19 A.A. Branca and, also, any document that you
20 prepared as the accountant for May Construction
21 to evidence the receipt by you, individually,
22 from May Construction?

23 MR. GOODRICH: Can you
24 ask one question at a time.

25 Q. Did you prepare any documents as

□

1 A. Branca 138

2 the accountant for May Construction to evidence
3 the receipt of money by you, individually, from
4 May Construction?

5 A. Me or my accounting firm?

6 Q. My question was you.

7 A. I never received monies.

8 Q. Never received monies from --

9 A. May Construction. Personally.

10 Q. And your accounting firm did;
11 correct?

12 A. Accounting firm did.

13 Q. And you prepared a 1099?

14 A. Correct.

15 Q. All right. Let's go over the

16 Answer to this matter. You reviewed this
Page 118

Branca's deposition.txt

17 Answer before it was submitted?

18 A. Yes.

19 Q. You are claiming that

20 Mr. Aronson owes you \$136,050; correct?

21 A. It's probably more now.

22 Q. But in the Answer, that's what
23 it says.

24 A. If that's what it says, that's
25 what it says.

□

1 A. Branca 139

2 Q. Do you have the invoices to
3 support that contention?

4 A. Is this for accounting fees?
5 He owes me two ends. He owes me accounting
6 fees and he owes me development costs. Was
7 that the accounting fees that are owed?

8 Q. I'm referring to the accounting
9 fees.

10 A. Accounting fees; a copy of the
11 invoice with the supporting documents behind
12 them was submitted to you as part of discovery.

13 Q. Are those the only documents you
14 have to support this contention?

15 A. Yes.

16 Q. You are seeking a claim for
17 \$48,331 as a first counterclaim, correct?

18 Relating to Middle Paten Road; correct?

19 A. If that's what it says there.

20 Q. That's what it says. Do you

Branca's deposition.txt
21 believe you also provided me with

22 substantiation for that claim?

23 A. Yes.

24 Q. And you have nothing else, other
25 than what you have provided to me?

□

1 A. Branca 140

2 A. No.

3 Q. And with regard to your count
4 two, have you provided to me all documentation
5 in support of that claim for \$13,303?

6 A. What is that claim for?

7 Q. I will let you take a look at
8 the Answer and you can tell me.

9 A. Yes. On the sheet, Bear Hill
10 Associates and Middle Paten Road, the
11 development costs are all lumped together.
12 I don't know why we broke them out into two
13 claims.

14 Q. My question was, did you provide
15 me with all the documentation in support of
16 that claim?

17 A. Absolutely.

18 Q. Absolutely? Thank you.

19 MR. GOODRICH: I just want to
20 make a note that there were multiple
21 documents provided to you prior to
22 the commencement of the lawsuit, also,
23 when we discussed this; okay?

24 MR. REIS: Okay.

25 Q. With regard to your fourth
Page 120

Branca's deposition.txt

□

1 A. Branca 141

2 counter claim, you have asked the Court to
3 order that Mr. Aronson deposit \$200,000 because
4 you are continuing to incur, quote unquote,
5 ongoing and continuing costs and expenses to
6 develop Middle Paten Road and Bear Hill
7 property; is that correct?

8 A. Correct.

9 Q. Now, all expenses should have
10 stopped consistent with the TRO; correct?

11 A. The TRO said, "do not encumber,
12 transfer or sell the property." It did not say
13 I couldn't continue to develop the property.
14 So, under the advice of counsel, come
15 January 1st of this year, I stopped paying the
16 bills. But up until January 1st of 2008,
17 I incurred costs and paid bills.

18 Q. Have you provided me with the
19 documentation required to substantiate your
20 ongoing and continuing costs that you have
21 incurred? As you have alleged, rather?

22 A. I believe -- There were a bunch
23 of documents that were sent. Just the sheets.
24 And I believe you sent the sheets through
25 courier.

□

1 A. Branca 142

2 Q. When you say "you," who do you

Branca's deposition.txt

3 mean?

4 MR. GOODRICH: He was looking at
5 me. I believe it was sent, also,
6 under separate letter, saying that
7 there were bills accumulating and we
8 wanted permission to pay those bills.

9 Q. Does Lorraine Pellegrino still
10 work for you?

11 A. Yes.

12 Q. Do you know her home address?

13 A. No.

14 Q. Do you know what state she lives
15 in?

16 A. Connecticut.

17 Q. With regard to Bear Hills, did
18 you consult with Mr. Aronson relating to all
19 actions taken regarding that property?

20 A. Yes.

21 Q. Mr. Branca, you produced to me
22 an operating agreement of Bear Hill Associates
23 that only had your signature. Do you have a
24 fully executed copy?

25 A. Good question. I don't know.

□

1 A. Branca 143

2 I would have to see. If I produced it to you,
3 then that's what I have. But I thought it was
4 fully executed.

5 Q. You produced to me a
6 shareholders agreement for Windward Holdings.

7 A. Okay, so you did have it.

Branca's deposition.txt

8 Q. Windward Holdings.

9 A. I understand. I understand.

10 Back earlier, you asked me if I had it and I
11 said I didn't think that I had it.

12 Q. I have asked for corporate
13 minutes but --

14 A. You said why do we have an
15 amendment to the shareholders agreement when we
16 don't have a shareholders agreement.

17 MR. REIS: I'm sorry, I
18 apologize. My client produced
19 this because it's marked with a P.

20 Q. Any reason why you didn't date
21 it?

22 A. Any reason? I don't know.

23 MR. GOODRICH: Could you let him
24 see it?

25 Q. Do you see a date there?

□

1 A. Branca 144

2 A. Did you provide us with a copy
3 of that?

4 Q. Do you see a date there?

5 A. No.

6 Q. Thank you.

7 MR. GOODRICH: Sure there is a
8 date there.

9 Q. Next to your signature,
10 Mr. Branca.

11 Mr. Branca, P-174 through P-180

Branca's deposition.txt

12 were produced to your attorney. That's what
13 this document is that we just looked at.
14 MR. GOODRICH: In that last box
15 that just came?
16 MR. REIS: No, Mr. Goodrich.
17 off the record.
18 (Discussion off the record.)
19 (Break taken.)
20 Q. I just have one more question,
21 Mr. Branca, for today. I just want to clarify
22 one thing. 38 Seneca walk was just sold in
23 April?
24 A. Correct. 2008.
25 Q. Was that a property that was
□

1 A. Branca 145
2 held by windward Holdings?
3 A. Yes.
4 Q. The TRO directed that no
5 properties of windward Holdings be sold,
6 encumbered or pledged.
7 A. No, it didn't, sir.
8 It said none of the properties that belonged to
9 Yuly Aronson or that Yuly Aronson claimed an
10 interest in could be sold.
11 If you take out your shareholder
12 agreement, it clearly states that 38 Seneca was
13 not part of that deal.
14 MR. REIS: I have no further
15 questions for you. Thank you.
16

Branca's deposition.txt

17

ANTHONY BRANCA

18

19

20 Sworn and subscribed to
before me this day of 2008.

21

22 _____
Notary Public

23

24

25

□

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146

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I N D E X

3

WITNESS:
ANTHONY BRANCA

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E X H I B I T S

5

PLAINTIFF'S
FOR IDENTIFICATION:

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3 Vendor Questionnaire, 27 pgs.

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4 windward Holdings Amendment to
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5 Copies of Bank of New York checks
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6 Smith Barney FMS Statements.

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7 Smith Barney FMS Statements.

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8 CitiGroup Smith Barney Statements.

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Branca's deposition.txt

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2

CERTIFICATION

3

4

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.

5

6

7

I, KATHRYN MACDONALD, a

8

Stenographic Reporter and Notary Public of the

9

State of New York, do hereby certify:

10

11

That the witness whose

12

deposition is herein set forth was duly sworn

13

by me; that the within transcript is an

14

accurate record of the testimony given by such

15

witness, to the best of my knowledge and

16

ability.

17

18

That I am not related to any of

19

the parties involved in this matter, and that I

20

have no personal interest whatsoever in the

21

outcome thereof.

22

23

24

Kathryn MacDonald

25

ERRATA PAGE

1